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ABSTRACT

This collection of articles compares the problems and issues facing indigenous nations within the United States and Canada and examines forms of native resistance. Glenn T. Morris and M. Annette Jaimes summarize the evolution of the "legal status" of indigenous nations under U.S. law and examine how U.S. legal definitions undermine indigenous sovereignty and allow massive expropriations of Indian lands. This legal and conceptual groundwork is drawn upon by Ward Churchill, Winona LaDuke, Bernard Nietschmann, and William LaBon in case studies of the Black Hills land claim by the Lakota Nation (Western Sioux), the White Earth Anishinabe (Chippewa) land claim in Minnesota, the nuclearization of the Western Shoshone Nation in the Great Basin region, and the "Go Road" Supreme Court decision allowing a logging access road through traditional Yurok, Karok, and Tolawa religious sites on federal land. Jim Vander Wall describes the current situation of Leonard Peltier, an indigenous activist imprisoned by the U.S. government. Sharon H. Venne examines indigenous status under Canadian law. Three other articles on Canada natives (by Jim Harding, staff of the Dam the Dams Project, and Ward Churchill) describe the effects of (1) uranium mining in northern Saskatchewan (2) hydroelectric projects in northern Canada, and (3) colonial exploitation of the Lubicon Lake Cree. Dalee Sambo reports on critical issues in the Arctic, as seen by the Inuit Circumpolar Conference. This publication also contains a poem by Bobby Gene Garcia, a statement by John Trudell at the Black Hills International Survival Gathering, a map of indigenous North America, and profiles of contributors. (SV)

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Critical Issues in Native North America

Edited by Ward Churchill

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IWGIA Document No. 62

Critical Issues in Native North America

Edited by Ward Churchill

Copenhagen
December 1988/January 1989

Dedication

To Vine Deloria, Jr., who showed so many of us the way...

Cover Photo Credit: We could imagine no more eloquent visual statement concerning the gravity and significance of the critical issues in contemporary Native North America than that expressed in the face of the Inuit elder captured in Bill Hess' exquisite photograph.

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Foreword

For Freedom

Great Spirit, I chant for your help
once again
The strength of the four winds braced,
my mind.
My song set me free for I have
dared to dream
before of life-giving
freedom.

I'm free as an Eagle flying over
spacious prairies
that stilled the soul.

Unconstrained,
life-giving freedom
soaring under the
aspect of eternity.

Mountains and seas are no match
for my wings.

What matters if I fly alone?

Where freedom lies
there I find...

home.

- Bobby Gene Garcia -
(January 7, 1980)

Preface

Statement of John Trudell, Last National Chairman of the American Indian Movement, at the Black Hills International Survival Gathering

July 18, 1980

I'd like to thank you all for coming to this place, and I'd like to give thanks for being welcomed here myself. And I would like to talk tonight in honor of all of us in the struggle who have lost our relations to the Spirit World. I would like to talk in honor of the wind, one of the natural elements. This is a survival gathering and one of the things I hope you all learn while you're here is...to appreciate the energy and power that the elements are, that of the sun, the rain and the wind. I hope you go away from here understanding that this is power, the only real, true power. This is the only real, true connection we will ever have to power, our relationship to Mother Earth.

We must not become confused. We must not become confused and deceived by their illusions. There is no such thing as military power. There is only military terrorism. There is no such thing as economic power. There is only the economic within these illusions so we will believe they hold power in their hands. But they do not. All they know how to do is act in a repressive, brutal way.

The power. We are a natural part of the earth. We are an extension of the earth; we are not separate from it. We are part of it. The earth is our mother. The earth is a spirit, and we are an extension of that spirit. *We* are spirit. *We* are power. They want us to believe that we have to believe in *them,* that we have to assume these consumer identities and these political identities, these religious identities and these racial identities. They want to separate us from our power. They want to separate us from who we are. Genocide.

Genocide is just an intellectual way of saying murder because we live in a so-called "civilized," industrialized world. And because this world is allegedly civilized and allegedly has laws, they can't go out and call an act of murder, murder any more. They call it genocide to throw another illusion in our eyes. And they have limited our ability to see the necessity for our survival because they want us to believe that genocide just means physical extinction.

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We must consider the *spiritual* genocide that they commit against us: the spiritual genocide that white people have been victimized for thousands of years, the spiritual genocide that told them not to respect the earth – the spiritual genocide that told them not to respect the life that *is* the earth – but to pay all their tribute through the churches to god and heaven, that heaven would take care of them in the afterlife. They tried to take and suppress our natural identity, our natural spiritual connection to the earth.

We must move to the time when we truly understand our connection to real power because these people who deal with illusions and imitations, these men who have attempted to "improve upon" nature, they want to keep us confused. They want to keep us confused with sexism and agism, racism and class. They want to keep us in confusion so that we will continue to believe in one lie after another as they program them into our minds and into our society.

There is no hope for the American political system. The ruling class, the exploitative one percent who control world economics today, are not going to change under the existing political rules. They are going to lie to us and they are going to create the illusion of "changes," and they are going to push one face after another in front of us, making promises. We have to understand our role as a natural power. We have to understand that when our oppressor treats us this way and do these things to us, we allow him to do it so long as we accept his lies. As long as we make excuses for his lies, as long as we tolerate his brutality, then we *allow* him to mistreat us. We have been allowing it too long. That's genocide.

When I go around America and I see the bulk of the white people, they do not feel oppressed. They feel powerless. When I go amongst my own people, we do not feel powerless. We feel oppressed. We do not want to make the trade. We see the physical genocide they are attempting to inflict upon our lives and we understand the psychological genocide they have already inflicted upon their own people...that this is the trade-off they want us to make for survival, that we become subservient to them, that we no longer understand our real connection to power, our real connection to the earth.

Power. They can't stop the wind and they can't stop the rain. They can't stop the earthquake and the volcano and the tornado. They can't stop power. We are a spiritual connection to the earth. As individuals we have power and, collectively, we have the same power as the earthquake, the tornado, and the hurricanes. We have that potential. We have that connection.

We must be willing in our lifetime to deal with reality. It's not revolution we're after; it's liberation. We want to be free of a value system that's being imposed upon us. We do not want to participate in that value system. We don't want to change that value system. We want to remove it from our lives forever. Liberation. We want to be free. But, in order for us to be free, we have to assume our responsibilities as power, as individuals, as spirit, as people. We are going to have to work at it. We are going to have to be committed to it. We must never underestimate our enemy. Our enemy is committed against us 24 hours a day. They use 100% of their efforts to maintain their materialistic status quo. 100% of their effort goes into deceiving us and manipulating us against each other. We have to devote our lives. We have to make our commitment. We have to follow a way of life that means we are going to resist forever.

In the 1980s, we have to start working more realistically with a resistance consciousness. A resistance, something we can pass on as strength to coming generations. A resistance where organizational egos do not get in the way, a resistance where the infiltrators and the provocateurs and the liars and the betrayers and the traitors do not get in the way. We will not get our liberation if we do not seriously analyze the experiences of our own lifetimes. The other side, the enemy, has studied. They understand what we were up to in the 1960s. They understand what we wanted in the early '70s. They have studied us.

They create certain events, and they manipulate the economics, and they manipulate the circumstances because they want to smash us the same way they did in the '60s, so they can come in and smash our movements. We must become of a resistance consciousness. We must say that, "We will not allow you to smash us, even if it means that we have to deal with that part of you that you planted in me. We will not allow you to smash us. This is part of our obligation to the earth. Only by fulfilling our obligation to the earth can we fulfill our obligation to the people. Only by understanding our connection to the earth can we create a fair system that's going to be good to the people."

We must go beyond the arrogance of human rights. We must go beyond the ignorance of civil rights. We must step into the reality of *natural* rights because *all* the natural world has a right to existence. We are only a small part of it. There can be no trade-off. We are the people. We have the potential for power. We must not fool ourselves. We must not mislead ourselves. It takes more than good intentions. It takes commitment. It means that at some point in our lives we are going to have to decide that we have a way of life that we follow, and we *are* going to live that way of life, even when our enemies totally surround us, even when our enemies act against us with brutality and harshness, with lies and bribes. We are going to have to stand *up to* brutality and harshness, lies and bribes. We are going to have to stand *with* our way of life. That is the only solution there is for us. We cannot reach a point in our lives where we're going to sit back and say, "Well, we'll make this compromise with the other side."

They have every intention that they are going to use the nuclearization of the world to colonize you all. There is a new Indian this time. The new Indian is white. They don't need you any more because they've got an entire potential world market with millions and millions of consumers. So, all the lies they've dangled in front of your faces, well, they're going to start pulling back on these lies a bit, and they're going to start slapping you all with a bit of reality: the reality that there are not political freedoms in America; the reality that there is not religious freedom in America. You all are going to have to deal with reality and stop making excuses for America.

We Indians are going to have to act as runners and messengers. We are going to have to run and act as teachers. We are going to have to talk to all the people who will listen to us about what we believe, what it is that we know to be right. We're going to have to find ways to become a communication of ourselves. They are afraid of us. We must always remember that every time they have to create a system built upon traitors coming in and betraying you, any time they have to build that system, it is because they understand they have a weakness. And if we persist in our struggle and become dedicated in our resistance...we will take them down through that weakness.

It doesn't matter how many jail cells they build. It doesn't matter how many racist judges, sexist judges, agist judges and class judges they have. It doesn't matter how many of their side they put into illusory positions of "respectability." It doesn't matter what they throw at us because *we* make the difference. *We* make the decision. *We* are power.

They deal in illusions, and that's all it is. We must not be afraid. We must never allow fear to be a part of our life. We must always deal with reality. They have been able to use the element of fear to control the masses of people through murder and making the rest of the people afraid of being murdered. But what good is it to live on this sacred place, what good is it to be here if we can't live with dignity and respect? We are here just for our own purposes any more than we are here for them.

We have to understand the implications of slavery and that America is a slave state. One way to understand this is that all of you grew up and left your homes to seek your independence, and immediately went into debt. And there went your independence. Slavery is slavery. Whether you are an indentured servant or in debt, or whether you are in chains, slavery is slavery. We have to evaluate our values. We have to start stepping away from the concepts they forced us to learn. We must share knowledge. We must not be drawn into their traps. Whatever we do, we must do as a resistance; whatever we do as a people, whatever we do in the name of the people and the earth, we must do this with humility and with gratefulness for what we are and what we have. But we should not do it with pride.

Because John Wayne is proud, the marines are proud. People flying B-52 bombers are proud. How are we going to get our liberation if we take on *their* characteristics? It is time for us to think. We hate to think about the terminology we use, [but] we must think about the thoughts that go with our terminology.

We must make our resistance totally complete. There must be no last way, half way measures. We have to learn to put up and deal with the hard times just like we enjoy the good times. We have to learn and understand that hard times are necessary for the good times to be here. We have to learn and understand that all the struggle we will go through in our lives does not mean we are losing. We have to understand that they want us to be lazy in our minds and lazy in our spirits and lazy in our thinking. But the nature of the People of the Earth has always been one of struggle. It has *always* been. As the indigenous people of the western hemisphere, we learned to struggle and live because of the struggle of our living. We learned to live with harmony and respect for Mother Nature. We never forgot who we were...

We always had to struggle, so let's not fool ourselves and try to make ourselves quit what we believe just because it's going to be hard. Let's struggle for a purpose. Let's struggle for the freeing of the earth because only by freeing the earth, and those who would attack the earth, can we be free ourselves. It is the only way we can do it.

There have been many social revolutions in America. There have been many social organizations. There have been women's rights movements; there have been equal rights movements; there have been union movements. And look who's still controlling our lives. We've got to deal with that reality. The people have risen before. The people have spoken before. The people have tried before. But somewhere they did not put it all together, the reason being that they always attempted to change the social conditions of America without addressing the issue of our relationship to the land. [Yet] they cannot create a repressive military regime without the land. They cannot exploit economics without the land...

We must not take them on just on the fact that we are going to own the land...Our concern must be *for the land as well as ourselves.* If we do not use our minds to think of our coming generations, they will win their psychological genocide against us. We must not become discouraged. We must never quit...If they stop us one way, then we must find another way. They are afraid of consistency.

They always throw issues at us to keep us jumping from one issue to another. They throw lies and illusions in front of us. We must learn from the Vietnam War. The white American people said they were against war. That's what the people said. Then they went and listened to their lying politicians, and their lying politicians said, "Okay, we will help you. We will declare peace." And so the lying politicians got the people to settle for withdrawal from Vietnam as *being* peace. And meanwhile my people were going through a war right here, right here on the Pine Ridge Reservation. And all that went unnoticed in the celebrations over peace being declared. The lie was sunk in, and the American people accepted the lie.

When the black people were struggling for what became civil rights, really they were talking about equality. The politicians stepped in and said, "We will help you all." And the black people settled for civil rights, which is only part of life. Now the politicians come talking again: "We are going to help you with nuclear power." We've got to think about our past experience.

If we are going to consciously become power and use our power correctly...we are going to have to find a way to communicate our thoughts and our resistance and our consciousness which will not accept the nuclearization of the earth, that this goes against everything we know and believe in, that this time we draw the line. We have to take the initiative. We can no longer afford to become and remain reactionary...We should work within our movements, but we must always remember these are parts of a total resistance. The resistance is the one thing at this point in our generation which can give life to the coming generations...

When we talk about the other side and energy, we can only place so much responsibility on the shoulders of the enemy. And we *do* have an enemy. We can call him Jimmy Carter or Ronald Reagan, or we can call it the Trilateral Commission. We can call them anything we want, but we've got to come to the reality that they *are* the enemy because our friends and the people who love us would not do this to us. So they *are* the enemy. We have to deal with this reality: "the enemy." There must be this consciousness that goes into our minds and we will start to act accordingly. And we must know what responsibilities we must place upon the enemy, and what responsibilities we must take upon ourselves. Because, when we talk about "the energy crisis," we must remember that we *are* energy...We are energy, so we must, if we are going to go out with the truth and spiritual connection behind us when we stand against our enemy – and we accuse the enemy of misusing energy, and we accuse him of abusing it – then we better think real hard about how we misuse it ourselves. Because we *are* energy. We have to deal with that.

We are energy, and its how we use ourselves that allows the enemy to misuse us. This resistance and this struggle for survival must be total, absolutely complete. There are no half measures. They have interfered in our lives since the moment we were born. Look at America. You have to pay to be born, and you have to pay to be buried. That tells you a lot about our freedom. And if they've gotten it into our consciousness to accept *that,* then we've got a lot of work to do. We really do. But we have the ability to change it because we are a natural part of the earth...because we were *here*. The earth did not put useless things here. We are a natural part of the creation.

They have been attacking indigenous people, and they have been misusing white people, and they want to push us all into a position where all we think about is ourselves. They want us to forget the earth, just like they used early christianity to make the christians forget the earth. They want to do it to all of us again, in this generation. They want to isolate us and call us names like "communist" and "anarchist" and "terrorist" and "criminal." They want to attack us. They want to use terrorism to intimidate us. We must build a resistance in our hearts that says we will not accept it, we will *never* accept it.

As to the indigenous peoples, I don't know how you all relate. But indigenous people, understanding power, we are the spirit. We are a natural part of the earth. And all our ancestors, and all our relations who have gone to the Spirit World, they are here with us. They have power. They will help us. They will help us to see, if we are willing to look. We are not separated from them because there is no place to go. This is our place, the earth. This is our mother. We will not go away from our mother.

No matter what they do to us, no matter how they strike at us, every time they do it, we must continue. But we must never become reactionary. The one thing that has always bothered me about revolution is that every time I have met the revolutionaries they have acted simply out of hatred for the oppressor. What we must do is act out of love for our people. No matter what they ever do to us, we must always act out of love for the people and for the earth. We must *never* react out of hatred for those who have no sense.

Prelude

Succeeding Into Native North America

by Winona LaDuke

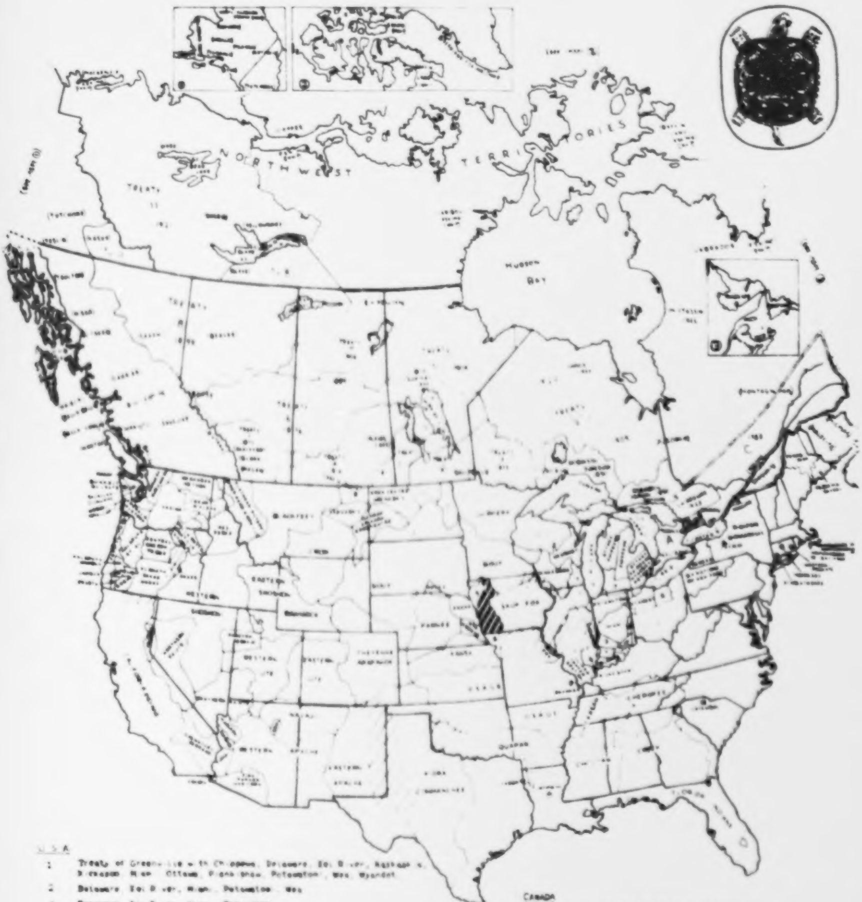
The map on the facing page could be called the indigenous North American view of bioregional secession. Although the scale in which it is presented prevent all the details from being clear, the treaty and land claim areas involved are not exactly how it was B.C. (Before Columbus); they are instead the basic outlines of the *legally* defined land areas of native nations. The map, even through its general contours, may help correct some of our basic miseducation:

> *First,* the map shows how North America's indigenous peoples lived in what amount to bioregional configurations.
>
> *Second,* it shows that North America's reigning nation-state governments – those of Canada and the United States – are, according to the indigenous "host" nations, on shaky grounds. Very little land in North America should not rightly be under native jurisdiction.

Back to the first point. When I was in grade school, I was taught there were Plains Indians (warlike), Woodland Indians (democratic), and Pueblo Indians (pacifistic), and that's about all. What was left out was that the treaty areas and treaty rights of indigenous people in North America are *ongoing,* and that they accrue to recognized *nations,* demonstrating distinct socio-cultural and linguistic patterns. Also omitted from my education was the fact that these nations had survived quite well within their naturally defined territories since time immemorial; there was/is trade between each of the indigenous areas, but each was also essentially self-sufficient.

Today, a lot of people question the necessity and utility of centralized nation-state governance and economics. They find the *status quo* to be increasingly absurd, and are seeking alternatives to the values and patterns of consumption presently dominating not only North America, but the rest of the planet as well. The living reality of Native North America, and the bioregionally-determined redefinition of polity it represents, offers the model for such an alternative arrangement. And, if Leopold Kohr and the Euskadi (Basques) say such a naturally grounded structure could work in Europe, why

INDIAN LAND CLAIMS & TREATY AREAS OF NORTH AMERICA



U.S.A.

1 Treaty of Greenville with Chippewa, Delaware, Eel River, Kaskaskia, Kickapoo, Miami, Ottawa, Piankeshaw, Potawatomi, Wea, Wyandot
2 Delaware, Eel River, Miami, Potawatomi, Wea
3 Delaware, Eel River, Miami, Potawatomi
4 Delaware, Eel River, Kickapoo, Miami, Potawatomi
5 Treaty of Prairie du Chien with Sauk, Fox, Sioux, Omaha, Iowa, Oto, Missouri
6 Chippewa, Delaware, Munsee, Ottawa, Potawatomi, Shawnee, Wyandot
7 Ottawa, Chippewa, Potawatomi, (refers to dark stripes)
8 Gros Ventre, Piegan, Blood, Blackfeet, River Crow
▨ Shows overlapping land claims/treaty areas

CANADA

A Upper Canada Pre-Confederation Treaties
B 1923 Treaty - Mississaugas (Rice L., Mud L., Scugog L. Alderville)
C 1763 Royal Proclamation Exempted Area
— — Represents Adhesions
(Cree) words in brackets show Indian Societies of Upper North America

Sources: Indian Land Cessions (map) by Sam B. Hilliard (supp. no. 16, Annals of the Assoc. of American Geographers, Vol 62, No. 2, June 1972); Current Affairs Atlas 1979-80 Pub. Macmillan Press; and maps from: Left Out? The Indians and the Canadian Constitution (Nations, Indian Brotherhood of Canada/Survival International) and First Nations, States of Canada & United Kingdom Patriation of the Canadian Constitution (Constitutional Committee of the Chiefs of Alberta). 1981 © [illegible]

A reproduction of this map is available for $3.50 postpaid from Northern Sun Alliance, 1519 East Franklin Street, Minneapolis, MN 55404; or £1.50 postpaid from C.I.M.R.A., 218 Liverpool Road, London N1, United Kingdom.

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not here? So it is important that everyone learn as much as possible about American Indian *realities,* rather than the self-serving junk they usually teach in school.

The second important aspect of the map is the legal basis for protecting the environment and its inhabitants which it points up. The native struggle in North America today can only be properly understood as a pursuit for the recovery of land rights which are guaranteed through treaties. What Indians ask – really, what they *expect* – from those who would claim to be their friends and allies is respect and support for their treaty rights.

What does this mean? Well, it starts with advocating that Indians regain jurisdiction over what the treaties define as being their land. It means direct support to Indian efforts to recover their lands, but *not* governmental efforts to "compensate" them for its loss with money (in other words, buying them off). This, in turn, means that those Indian governments which would *traditionally* hold regulatory and enforcement power within these territories should have the right to do so right *now.* It also means that land which is currently taxed, regulated, strip-mined, militarized, drown by hydroelectric generation or over-irrigation, and nuked by (or with the blessing of) the U.S. and Canadian governments would not be under their control or jurisdiction any more.

What is perhaps most important about Indian treaty rights is the power of the treaties to clarify issues which would otherwise be consigned by nation-state apologists to the realm "opinion" and "interpretation." The treaties lay things out clearly, and they are matters of international law. In this sense, the violation of the treaty rights of any given people represents a clear violation of the rights of all people, everywhere. This can be a potent weapon in the organization of struggles for justice and sanity everywhere. And it should be appreciated as such to those who champion causes ranging from protection of the environment to universal human rights.

Native North America is struggling to break free of the colonialist, industrialist, militarist nation-state domination which has presently engulfed it. It is fighting to "secede" from the U.S. and Canada. But, because of the broader implications of this, we refer to the results not as "secession," but as "success"; not just for Indians, but for all living beings. Won't *you* help us succeed?

Introduction

Critical Issues in Native North America

It is impossible to address all the critical issues currently impacting Native North America in a single volume. We have therefore attempted to assemble a representative sample, including topics drawn from all areas lying north of the Rio Grande. By this method, we hope not only seek to analyze specific situations, both concrete and conceptual, but point to the present broader state of affairs pertaining to the indigenous nations imbedded within the U.S. and Canada. In the process, of course, much more has been left out than has been included in the book.

Some attempt will be made to compensate for this circumstance through release of a second volume of critical issues studies concerning Native North America later in 1989. In this second book, readers interested in direct consideration of the effects of uranium mining upon indigenous peoples within the U.S., the ongoing fishing rights struggles occurring in the Pacific Northwest (the U.S. states of Oregon, Washington and Idaho in particular) the continuing forced relocation of traditional Diné from their land around Big Mountain (in the U.S. state of Arizona), the situation of the James Bay Cree in Canada, and "transborder" issues such as those effecting the Mohawks (U.S. and eastern Canada), Haida (Alaska and northwestern Canada), and O'Otam (Papago; U.S. and Mexico) will find the information they seek.

In the meantime, this first volume is composed of three distinct sections, each dealing with an Anglo-Saxon colonial entity. The initial grouping concerns itself with matters within the 48 conterminous states of the U.S., the second with Canada, and the the third with the Arctic North (including territories claimed by both nation-states). Mexico has not been included as an area of scrutiny (and will also be excluded from consideration in the second volume, other than in the O'Otam transborder connection) because, although its territory is geographically part of North America, its colonial heritage has been and remains exclusively associated with the Spanish conquest. In this sense, the issues associated with Mexican treatment of indigenous issues might be more fruitfully explored within a volume concerning itself with critical issues in Latin America.

The present volume opens with an excellent summary by Glenn T. Morris of the evolution of the"legal status" of indigenous nations under U.S. law, and examination of how U.S. legal definitions consequently conflict with the aspirations of indigenous nations to exercise their inherent sovereign rights and self-determination. Morris' essay is followed and reinforced by a more specific study prepared by M. Annette Jaimes which demonstrates how the legalistic appropriation of American Indian identity criteria by the U.S. has served to undermine the expression of indigenous sovereignty, and can be linked directly to the massive expropriation of Indian landholdings over the past century.

Case studies then follow which draw directly from the legal/conceptual groundwork established by Morris and Jaimes: the editor's own examination of the Black Hills land claim within the present-day states of North and South Dakota; Wyoming, Montana and Nebraska; Winona LaDuke's study of the White Earth Anishinabe land claim in present-day Minnesota; Bernard Neitschmann's and William LaBon's brief exploration of the nuclearization of the Western Shoshone Nation in the Great Basin region of the U.S.; and Morris' sketch of the implications of the so-called GO-Road decision in northern California, effecting the Yurok and other indigenous nations in that area. The U.S. section concludes with an essay by Jim Vander Wall summing up the current situation of Leonard Peltier, an indigenous prisoner of war incarcerated by the federal government because of his active resistance to the colonization of his people.

Section II follows the same pattern as the first section, beginning with Sharon H. Venn's Canadian counterpart to Morris' study of indigenous status under U.S. law. This is followed by Jim Harding's elaboration of the recent colonially engendered effects of uranium mining upon indigenous peoples within Canada. Next, the Dam the Dams Project provides insight into both the present and planned "engineering" of the entire Canadian hydrological system as an "economic development" measure, and explains the predictable impact of this not only upon indigenous peoples, but upon non-Indians the eco-system generally. The section on Canada closes with my own summary of the effects of colonial policies and exploitation upon a given people, the Lubicon Lake Cree.

The final section considers issues and situations within the Arctic North, and consists of a single essay prepared by Dalee Sambo of the Inuit Circumpolar Conference (ICC). The Sambo material is framed in the form of an ICC report, and thus adopts a rather different approach to exposition than do the other contributions. However, as a result of its very format, the report is able to cover a considerable range of issues in a very short amount of space.

Hopefully, the contents which follow will prove to be of real utility in terms of allowing a broad cross-section of people around the world to better understand the nature, scope and magnitude of problems now confronting the indigenous peoples of North America. Equally, it is hoped that the subsequent volume will add substantially to this usefulness.

– *Ward Churchill* –
Boulder, Colorado
U.S.A.

Section I.

The United States

The International Status of Indigenous Nations Within the United States

by Glenn T. Morris

Within the settler society of the United States, there exists a broad ignorance and confusion about the political, economic, and legal history of indigenous peoples. This ignorance has led to the conclusion that indigenous peoples are the equivalent of "ethnic groups" or "domestic minorities," while ignoring their national, sovereign status. Indeed, within the indigenous nations themselves, primarily as a consequence of the colonial process, there is less than unanimity about the character of indigenous self-determination and the manner in which it should be exercised. However, as the term implies, each indigenous nation within the U.S. should have the right to exercise its political will, and determine its own future, according to its own needs, traditions, and aspirations. Far from dictating how self-determination should be exercised in the U.S. among indigenous peoples, this article will simply outline the historical legal, political and economic developments which have impaired the full exercise of political, economic and cultural freedom by indigenous nations. It will also discuss recent developments in the international arena and within the international indigenous movement, and how these developments may be utilized by indigenous peoples to advance their status in the international community.

Colonial History and Indigenous Nationhood

From the time of the initial contact of Europeans with the indigenous nations of the Western Hemisphere, European states recognized the national character of indigenous society.[1] Subsequently, numerous debates ensued which raised the issue of the degree to which indigenous national sovereignty was to be respected by the European colonial powers.[2] Despite the prevailing political, economic, and military view in colonial Europe which sought to ignore the national rights of the indigenous peoples of the Western Hemisphere, the noted legal scholars of the day recognized the legal and moral prohibitions against the dispossession of the indigenous peoples of the Americas of their lands without their knowledgeable and informed consent.

Among the most notable legal theorists of the time, Franciscus de Vitoria held that "the aborigines were true owners, before the Spaniards came among them, both from the public and private point of view."[3] Although others advanced the theory that indigenous peoples were "outside the law of nations" due to their "barbarism," or because they were non-christians, the prevailing legal view was that indigenous peoples were not to be divested of their territories by force or coercion. If the contrary should happen, "it shall be null and of no effect."[4] In spite of the writings and opinions of legal scholars such as Vitoria, las Casas, and Vattel, which fully recognized the rights of the indigenous nations to control their territories, contemporary writers and politicians have subverted two ancient doctrines to justify the colonial occupation of the Americas: the doctrines of discovery and conquest.

The common modern assumption is that through the operations of the doctrine of discovery, European states obtained title to, and sovereignty over, indigenous peoples' lands through the mere act of "discovering" them. Not only is such a conclusion legally ridiculous, it completely misinterprets the doctrine. Under discovery doctrine, the only right which was gained or lost was that of the European powers to negotiate with the indigenous peoples of the Americas. Once one European power had "discovered" other peoples, competing European states were precluded from carrying on relations with the same indigenous peoples. No title transferred without the consent of the indigenous peoples involved.[5]

Similarly, during the colonial period, the legal transfer of territory under the doctrine of conquest was drawn very narrowly. The legal scholar Emmerich de Vattel concluded that conquest could transfer title only after the execution of a "just war."[6] He noted that a just war could only ensue in necessity of self-defense. If a state pursued a just war in the absence of an injury, or not in self-defense, then an unjust war was undertaken. Accordingly, the overwhelming majority of the wars waged in the Western Hemisphere against indigenous peoples were unjust, and the burden of proof rested with the invading states to prove the contrary. Consequently, the fiction that title to the Americas was transferred under this doctrine is constructed on an extremely weak foundation.

Even if, *arguendo*, indigenous title was transferred through the waging of a "just war," the indigenous lands which were not expressly ceded by treaty provision were retained by the indigenous peoples, and the retained lands continued to be held with their full national character intact.[7] Consequently, if the transfer of territory from indigenous nations to the invading colonial/settler states of Europe could not be justified legally, absent a voluntary cession by the indigenous peoples, then what was the justification for the dispossession? The very simple response is that the territory was taken through the operation of a system of colonialism which created legal fictions to justify its actions or, just as frequently, ignored the application of laws as they existed – a process which continues today.

In the case of the United States, very sophisticated legal and political techniques were employed to divest indigenous peoples of their territories. The assumption has been that with the passage of time the claims of indigenous peoples would be forestalled, and the policies of the settler governments would become invulnerable to attack. Indigenous peoples, however, have not been acquiescent in such a conclusion. The international movement for indigenous self-determination is concerned precisely with overturning the racist and colonialist legal fictions which have justified the destruction of indigenous peoples around the world. The following section will describe some of the methods used by the U.S. to colonize indigenous peoples as a precursor to the description of some current methods of reverse U.S., and similar, policies.

The Treaty Relationship and Legal/Political Colonization

Although the first treaty between an indigenous nation and the United States was signed in 1778,[8] colonial governments had been treating with indigenous peoples for nearly 150 years prior to that.[9] The treaty relationship, then as now, was constructed upon three main tenets:

- That both parties to the treaty are sovereign powers;
- That the Indian [nation] has a transferable title of some sort to the land in question; and
- That the acquisition of Indian lands could not be safely left to individual colonists, but must be controlled by government monopoly."[10]

Using this foundation, the United States approached hundreds of indigenous nations and entered into binding international agreements with them. The perception, of these agreements and the status of indigenous nations, held by the United States at the time that they were signed is irrefutable. The position of the U.S. on this issue is found clearly in the opinions of the U.S. Supreme Court, and the opinions of the Attorneys General of the United States.

In 1832, Chief Justice John Marshall outlined the U.S. perception of indigenous nations and the status of treaties between the U.S. and indigenous peoples:

> The very term "nation" so generally applied to [indigenous] nations means "people distinct from others." The words "treaty" and "nation" are words of our own language, selected in our diplomatic

> and legislative proceedings, by ourselves, having each a definite and well understood meaning. We have applied them to Indians as we have applied them to other nations of the earth. They are applied to all in the same sense.[11]

Similarly, U.S. Attorney General Wirt wrote:

> So long as a tribe exists and remains in possession of its lands, its title and possession are sovereign and exclusive. We treat with them as separate sovereignties, and...we have no more right to enter upon their territory than we have to enter upon the territory of a foreign prince.[12]

Seven years later, Wirt extended his remarks:

> The point, then once conceded that the Indians are independent to the purpose of treating, their independence is to that purpose, as absolute as any other nation. Being competent to bind themselves by treaty, they are equally competent to bind the party who treats with them. Such party cannot take the benefit of the treaty with the Indians, and then deny them the reciprocal benefits of the treaty on the grounds that they are not independent nations for all intents and purposes...Nor can it be conceded that their independence as a nation is a limited independence. *Like all other independent nations,* they are governed by their own laws. *Like all other independent nations,* they have the absolute power of war and peace. *Like all other independent nations,* their territories are inviolable by any other sovereignty...As a nation, they are still free and independent [emphasis added].[13]

The preceding opinions notwithstanding, the United States has consistently taken the benefit of Indian treaties while simultaneously denying the reciprocal benefits of indigenous nations. Between 1778 and 1871, the United States signed over 370 treaties with indigenous nations, in time violating the essential provisions of every one. From the indigenous perspective, treaties represented the pledge of the entire indigenous nation to uphold the provisions as they were mutually understood. To retreat from the pledge would be unconscionable. Conversely, the U.S. developed a policy which would allow it to alter treaty provisions unilaterally by passing subsequent legislation which would supersede specific treaty provisions.[14] The result of this doctrine was the evisceration of explicit and implicit treaty provisions without the consent or agreement of the indigenous nations involved.

Among the more prominent examples of this practice were the Indian

Representatives of the Lakota Nation and the U.S. Government negotiating what is probably the most famous international agreement between these two parties, the 1868 *Ft. Laramie Treaty*. The U.S. violated the treaty within five years.

Removal Act,[15] the Major Crimes Act,[16] the General Allotment Act,[17] the Indian Citizenship Act,[18] the Indian Reorganization Act,[19] and Public Law 280.[20] In each of these examples, the U.S. unilaterally imposed its will over the sovereign will of a treaty co-equal. In the case of the Indian Removal Act, Congress authorized the arbitrary removal of indigenous nations by the President. The affect of this law was the violation of dozens of treaties, one of the most prominent being the *Treaty of Hopewell* [21] between the U.S. and the Cherokee Nation. Despite the U.S. pledge in the treaty to respect Cherokee sovereignty and territorial integrity, the Indian Removal Act allowed the seizure of Cherokee lands and the forced removal of the Cherokee Nation – leading directly to the death of twenty-five percent of the Cherokee population.[22]

The Major Crimes Act was used by the United States to justify the unilateral usurpation of indigenous judicial authority in indigenous territories. This legislation was in direct contravention to expressed treaty provisions which recognized the criminal and civil jurisdiction of indigenous nations over their own citizens, and over foreign nationals within indigenous territory.[23] With the enactment of this legislation, the criminal jurisdiction of indigenous governments was dramatically reduced. Since the passage of this law, the U.S. judiciary has further reduced the criminal jurisdiction of indigenous courts.[24] Although indigenous nations continue to possess and exercise a functional level of civil jurisdiction, recent judicial and political actions threaten even that limited judicial power.[25]

One of the most destructive pieces of U.S. legislation imposed on indigenous peoples was the General Allotment Act of 1887, also known as the Dawes Severalty Act or simply the "Dawes Act." The purpose of the act was reflected in the *Minority Report of the House Committee on Indian Affairs:*

> The real aim of this bill is to get at Indian lands and open them up to settlement. The Provisions for the apparent benefit of the Indians are but a pretext to get at his lands and occupy them. With that accomplished, we have recently paved the way for the extermination of the Indian races upon this part of the continent. If this were done in the name of Greed, it would be bad enough; but to do it in the name of Humanity, and under the cloak of the ardent desire to promote the Indian's welfare by making him like ourselves, whether he will or not, is infinitely worse. Of all the attempts to encroach upon the Indian, this attempt to manufacture him into a white man by act of Congress and the grace of the Secretary of Interior is the baldest, the boldest, and the most unjustifiable.[26]

The consequence of the act, which required that communally-held indigenous national lands be divided into individually, privately-held plots, was disastrous for indigenous government, culture, and economics. Under the act, the national lands of 118 indigenous peoples were divided, and 38 million acres of land were taken by the U.S. outright. Another 22 million acres of land were declared surplus by the U.S. Government and opened for settlement. Another 30 million acres were lost due to alienation because of non-payment of taxes to non-indigenous governments and to alleviate debts created through the destruction of indigenous economies. In total, over 90 million acres of indigenous national territory were lost under the implementation of the Act.[27]

Another characteristic of the Dawes Act was that, as each individual Indian was allotted his or her parcel of land, s/he was simultaneously and unilaterally bestowed with U.S. citizenship, whether or not the individuals effected wished to become citizens or not; approximately two-thirds of all Indians within the United States were made citizens in this fashion between 1887 and 1924. In the latter year, the Indian Citizenship Act was passed, conveying U.S. citizenship upon the remaining one-third of the Indian population *en mass*. Although the legislation involved stipulates each newly-made Indian citizen would retain his/her "tribal membership" upon being formally incorporated into the U.S. polity – a matter which rendered them into what amounts to "dual citizens" – the implications of this "naturalization" drive are rather clear. With U.S. citizenship came associated individual obligations and responsibilities, "legitimate" federal demands for loyalty and allegiance, and – perhaps most important – another layer of rationalization as to why the government could not deal with indigenous peoples in terms of their sovereignty.[28] The viability of indigenous nations was severely undercut through imposition of U.S. citizenship upon their members, the affiliation and identification on the members themselves deliberately conflicted and confused (see Jaimes essay in this volume for a more detailed examination of this issue).

After nearly fifty years of pursuing the assimilationist policy of allotment, the U.S. replaced the General Allotment Act with the Indian Reorganization Act of 1934 (IRA). Admitting that allotment policy was a moral mistake and a failure in inducing indigenous peoples to assimilate into white culture, U.S. indigenous policy was dramatically altered. In contrast to the allotment period which promoted the destruction of indigenous culture and society, the IRA period was marked by a decision to allow limited self-determination for indigenous nations, but clearly within the parameters defined by the United States. In theory, the IRA was to allow political autonomy for indigenous governments, but in reality most indigenous peoples were coerced onto abandoning their traditional forms of government, and replacing them with clones of the U.S. system.[29] Although the IRA reforms were more desirable than the policy which preceded them, the IRA began an era in which the U.S. defined political and economic self-determination to suit its own desires rather than those of indigenous peoples.

The reform movement, represented by the IRA, was replaced in the 1950s with legislation designed to "terminate" indigenous nations, and assimilate them completely into the dominant, settler society. Public Law 280 involved a series of complex measures which transferred jurisdiction over indigenous peoples to the individual states of the United States. Simultaneously, legislation was adopted which abrogated treaties with indigenous nations, liquidated their national territories, and destroyed their national governments. Between 1954 and 1962, the U.S. had "terminated" over one hundred indigenous nations through the operation of this statute.[30] Eventually, some provisions of the law were repealed, but much of it remains intact today.

By the mid-1960s the U.S. began to re-evaluate its policy involving the destruction of indigenous government and culture. A policy which was subject to accusations of genocide and ethnocide was no longer consistent with the image of a human rights defender which the U.S. sought to project.

HONOUR
TREATIES
TREATIES
KEEP POLICE
OFF AKWESASNE
UPHOLD
MOHAWK
SOVEREIGNTY

Children of the Mohawk Nation engaging in political action intended to assist in the struggle of their people to maintain sovereignty and exercise self-determination in the contemporary era. (Photo: *Akwesasne Notes*)

With the birth of the modern movement for civil rights in the U.S., and the resurgence of indigenous demands for sovereignty and self-determination, advanced by such groups as the American Indian Movement (AIM) and the National Indian Youth Council (NIYC), the U.S. was forced to alter its indigenous policy. In an apparent attempt to pre-empt allegations of internal colonialism by international observers, the U.S. began to adopt the vocabulary of the international decolonization movement, albeit devoid of any of the substance. This is particularly true in the use of the term "self-determination."[31]

In 1970, President Richard Nixon made several recommendations regarding U.S. indigenous policy. Although he specifically repudiated the policy of termination, Nixon defined the U.S. concept of indigenous self-determination very narrowly. Under the Nixon doctrine, self-determination actually meant self-administration of federal programs within indigenous territory. It did not address the basic colonial administration of indigenous affairs by the United States which had developed, and it did not acknowledge any authority in indigenous nations to determine for themselves their political status.[32] Other than in its use of terms such as self-determination, U.S. policy continued to reflect a neocolonial denial of political and economic independence for indigenous peoples. This denial was the root cause of fishing rights confrontations in the Pacific Northwest in the 1960s – most notably on the Trail of Broken Treaties in 1972, and the seventy-one day siege of the village of Wounded Knee in 1973.[33]

Despite the demands for self-determination and respect for indigenous sovereignty, the U.S. continued to pass and enforce legislation which sought to use the language of decolonization while continuing to exercise ultimate control over indigenous nations. In 1975, the U.S. passed the Indian Self-Determination and Education Assistance Act.[34] The language of the Act belies its title, with the Congressional intent being "the maintenance of the Federal government's continuing relationship with and responsibility to the Indian people..." As history has indicated "the Federal government's continuing relationship" has been one of deceit, fraud, and domination of indigenous affairs without the consent or will of indigenous peoples themselves. As a response to the repeated efforts of the U.S. to subjugate indigenous nations, and to present the fiction that indigenous nations within the U.S. were simply domestic groups within the municipal jurisdiction of the U.S. Congress and Supreme Court, indigenous peoples began to advance their demands beyond the borders of the United States.

Contemporary Strategies of Indigenous Peoples Within the U.S.

Contemporary indigenous resistance has based itself on several essential principles, the most important among them was that indigenous peoples are members of sovereign nations with binding treaties which the United States is obligated to respect. As an extension of this position, indigenous resistance organizations, such as the American Indian Movement, asserted that indigenous nations, as colonized peoples within the U.S., possess a right to self-determination as defined, not by the U.S., but by international instruments on decolonization.

The entrance of AIM into the international arena was not the first attempt by indigenous peoples to bring the U.S. to account in the international community, however. In the 1920s, the noted Mohawk leader Deskaheh approached the League of Nations with Iroquois claims against the U.S., and with assertions of Iroquois sovereignty and self-determination.[35] As states are wont to do with issues of indigenous claims, the U.S., Canada, and most of the League ignored the claims. Fifty years later the League of Nations was gone, replaced by the United Nations, but the Iroquois, and other indigenous claims persisted. In 1974, AIM developed a strategy to extend the movement for indigenous self-determination beyond the limited remedies available in the domestic legal and political fora of the United States. In 1977, the International Indian Treaty Council (the international diplomatic arm of AIM) was recognized as the first indigenous non-governmental organization at the United Nations.

Since then, the international movement for indigenous peoples' rights has grown dramatically.[26] Indigenous peoples in the United States have utilized several international forums including the U.N. Commission on Human Rights, the International Labor Organization, and the U.N. Working Group on Indigenous Populations. Although no binding international covenants or conventions regarding indigenous peoples have been passed since 1957, recent developments leave room for optimism in this area. Of particular interest to indigenous peoples in the U.S. is the recent resolution of the U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities on the matter of contemporary interpretation of treaties between settler states and indigenous peoples.[27] Traditionally, states have viewed treaties made with indigenous peoples as niceties which carried little or no force of law beyond that which the settler state chose to bestow on them. With the passage of this resolution, an important body of the United Nations has decided to review the treaties to ascertain their international significance, and the degree to which they are binding on the states which signed them.

Although the treaty issue is of major importance to indigenous nations within the U.S., it is also of importance to other indigenous peoples, such as the Maoris of Aotearoa (New Zealand), and Cuna of Panama, and various indigenous nations in Canada. Because the review will be conducted by state members of the U.N., there is limited optimism among indigenous peoples that states will see the justice in enforcing the treaties which indigenous peoples continue to view as sacred national pacts.

Prospects for the Future

As with indigenous peoples around the world, indigenous peoples in the U.S. are participating to a greater and greater degree in international legal and political fora, particularly the U.N. Working Group on Indigenous Populations (WGIP).[28] Through this participation, the continuing abuses against the indigenous nations within the United States are brought into international focus. Of particular importance in this work is the development of an international declaration which outlines the rights of indigenous peoples under international law. As has already been mentioned, the limited relief available to indigenous peoples in the domestic courts of states forces indigenous peoples, including those in the U.S., to seek remedies elsewhere.

While the WGIP has proven to be an effective vehicle for the expression of indigenous frustration with the statist orientation of international law and politics, recent recommendations reflect the differences between indigenous aspirations and state intransigence. Nowhere is the divergence clearer than with the draft declarations themselves. In its recommendations to date, the WGIP has suggested very broad expressions of rights for indigenous peoples. For example, "the right to be free and equal to all other human beings," and "to be free from discrimination." They also would protect religious freedom, cultural identity, and the right to education. They do not mention such subjects as treaty rights or the right to be free from colonial domination by invader or settler states.

Conversely, the draft declaration of the indigenous delegates to the WGIP, including those from the U.S., expressly recognizes the right of indigenous peoples and nations to exercise self-determination, to control their traditional territories, and to have their treaties recognized as binding instruments of international law. Future sessions of the WGIP will be forced to address these very fundamental and difficult issues, and the indigenous peoples from the United States will be present to assert their position that international law and politics must finally be broadened to include them and their other indigenous brethren. Whether or not they are successful is one of the more critical issues presently facing the indigenous nations of the Fourth World.

End Notes

1 *Papal Bull "Inter Caetera"* of May 4, 1493 in Gottschalk, P., *Earliest Diplomatic Documents of America* (Berlin: 1927).

2 Truyol y Serra, "The Discovery of the New World and International Law," *Toledo Law Review,* 310 (1971).

3 Nys, Introduction to Franciscus de Vitoria, *De Indis et de Jure Belli: Relectiones,* reprinted as James Brown Scott (ed.), *The Classics of International Law* (Washington: 1917), p.128.

4 *Papal Bull Sublimis Deus,* in F.A. McNutt, *Bartholomew de Las Casas: His Life, His Apostolate and His Writings* (New York: 1909) p. 429.

5 Indian Law Resource Center, "United States Denial of Indian Property Rights: A Study in Lawless Power and Racial Discrimination," in *Rethinking Indian Law,* Committee on Native American Struggles, New York:, 1982, pp. 15-16.

6 Emmerich de Vattel, *The Law of Nations,* Book III, VII, § 26, p. 302.

7 Indian Law Resource Center, *Op. cit.,* pp. 18-19.

8 *Treaty with the Delawares,* September 17, 1778, *7 Stat. 13.*

9 See Cohen, Felix, *Handbook of Federal Indian Law* (1982, ed.) pp. 50-58
10 Cohen, Felix, *Handbook of Federal Indian Law* (1971, ed.) p. 47.

11 *Worchester v. Georgia,* 31 U.S. (6 *Pet.*) 515,559 (1832).

12 *Op. Att. Gen.*, April 26, 1821, p. 345.

13 *Op. Att. Gen.*, 1828, pp. 613-618, 623-633.

14 See, *e.g., Lone Wolf v. Hitchcock,* 187 U.S. 553 1903 (The Supreme Court held that Congress possesses the power unilaterally to abrogate treaties with indigenous nations).

15 *Act of March 28, 1830,* 4 *Stat.* 411.

16 *Act of March 3, 1885,* 23 *Stat.* 385, as amended at 18 USCA 1153.

17 *Act of Feb. 8, 1887,* 24 *Stat* . 388.

18 8 USCA § 1401 (a) (2).

19 48 *Stat.* 984, codified as amended at 25 USCA § 461-478 (1982).

20 *Act. of Aug. 15, 1953,* 67*Stat.* 588, codified as amended at 18 USCA §1162.

21 *Treaty with the Cherokees,* Nov. 28, 1785, *7 Stat.* 18.

22 A.M. Gibson, *The American Indian: Prehistory to the Present,* D.C. Heath, Lexington, MA, 1980, p. 323.

23 See, generally, Cohen (1971, ed.), *op. cit.,* pp. 45-46.

24 *Oliphant v. Suquamish Tribe,* 435 U.S. 191 (1978); See also Barsh, "Is There Any 'Indian' Law Left? A Review of the Supreme Court's 1982 Term," 59 *Wash. L. Rev.* 863 (1984).

25 *Merrion v. Jicarilla Apache Tribe* 102 S. Ct. 894 (1982); Colville *Washington v. Confederated Tribes of the Colville Reservation,* 447 U.S. 134 (1980); *Montana v. U.S.,* 450 U.S. 556 (1981).

26 H. Rept. no. 1576, 7-10, 46th Cong., 2d Sess., serial 1938 (1887). See also Gibson, *op. cit.,* pp. 495-500.

27 American Indian Policy Review Commission, *Final Report*, §§ 7, pp. 21-22 (1977).

28 As with any nation-state, the U.S. maintains that it enjoys special prerogatives in dealing with its citizens, and that its actions in this regard are an exclusively "internal" consideration, essentially exempt from most international standards, scrutiny or intervention. It is for this reason that the unilateral imposition of citizenship by any state upon the unconsenting members of another nation – precisely as embodied in both the General Allotment Act and the Indian Citizenship Act – is forbidden in international law.

29 See Deloria, Vine, Jr., and Clifford Lytle,*The Nations Within: The Past and Future of American Indian Sovereignty*, Pantheon, NY, 1984. For specific examples of the U.S. coercing indigenous nations into abandoning their traditional forms of government: Steven Tullberg, "The Creation and Decline of the Hopi Tribal Council," in *Rethinking Indian Law*, n. 5 above. Some indigenous nations continue to govern themselves under traditional institutions, e.g., Haudenosaunee (Six Nations Iroquois Confederacy), the Haidas of southern Alaska, the Miccosukee of Florida, the traditional Hopi, and the traditional Pueblos, among others.

30 See Cohen (1982, ed.), *op. cit.*, pp. 152-180.

31 For definitions of self-determination in international documents, see *Declaration on the Granting of Independence to Colonial Countries and Peoples*, G.A. Res. 1514, 15 U.N. GAOR Supp. (No. 16) at 66-67, UN Doc. a/P.V. 935 (1966). Although this resolution has not yet been extended to apply to indigenous peoples per se, efforts in that direction are being pursued. Also see Burger, J., *Report From the Frontier: The State of the World's Indigenous Peoples* , Zed Press, London, 1987, pp. 262-279.

32 *Special Message to the Congress on Indian Affairs*, (1970) Pub. Papers 564 (Richard M. Nixon).

33 For an overview of this period see Weyler, Rex, *Blood of the Land: The U.S. Government and Corporate War Against the American Indian Movement* , Vintage Press, N Y, 1984.

34 Pub. L. No. 96-638, 88 Stat. 2203 (codified at 25 U.S.C. §§ 450-450n 455-458e). Some subsequent legislation has been passed which enables indigenous peoples to exercise minimal degrees of autonomy, most notably the *Indian Child Welfare Act*, 92 *Stat*. 3069, 25 U.S.C.A. §§ 1901-1963. This law recognized the long-standing policy of the United States and Christian churches seizing Indian children out of their natural homes and placing them in non-Indian environments to facilitate the process of assimilation. In 1988, the Supreme Court will rule on the limits of the jurisdiction of the indigenous nations in these matters. *Mississippi Band of Choctaw Indians v. Holyfield* 511 So. 2d 918 (1987); *cert*. granted, doc. no. 87-9080.

35 Akwesasne Notes, ed., *A Basic Call to Consciousness*, Mohawk Nation via Rooseveltown, NY, 1978, pp. 13-23.

36 Burger, n. 29 above; Independent Commission on International Humanitarian Issues, *Indigenous Peoples: A Global Quest for Justice*, Zed Press, London, 1987. Since the creation of the IITC, nine other indigenous NGOs have been recognized by the U.N. They are: Four Directions Council, Grand Council of the Crees, Indigenous World Association, Indian Law Resource Center, Inuit Circumpolar Conference, National Aboriginal and Islander Legal Service, National Indian Youth Council, South American Indian Council (CISA), and World Council of Indigenous Peoples.

37 United Nations, Doc. E/CN.4/Sub.2/1987/L.54.

38 United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities Resolution 2 (XXXIV) of 8 September 1981; endorsed by the Commission on Human Rights by Res. 1982/19 of 10 March 1982; authorized by the Economic and Social Council (ECOSOC) Res. 1983/34 of 7 May 1982.

39 U.N. Doc E/CN.4/Sub.2/Ac.4/1985/WP.5.

40 Draft Declaration of Principles proposed by the Indian Law Resource Center, Four Directions Council, National Aboriginal and Islander Legal Service, National Indian Youth Council, Inuit Circumpolar Conference, and the International Indian Treaty Council. U.N. Doc. E/CN.4/Sub.2/AC.4/1985/WP.5.

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Federal Indian Identification Policy: A Usurpation of Indigenous Sovereignty in North America

by M. Annette Jaimes

As is amply demonstrated in Glenn Morris' essay included in this volume, American Indian peoples whose territory lies within the borders of the United States hold compelling legal and moral rights to be treated as fully sovereign nations. It is axiomatic that any such national entity is inherently entitled to exercise the prerogative of determining for itself the criteria by which its citizenry, or "membership," is to be recognized by other sovereign nations. This is a principle which applies equally to super-powers such as the U.S.S.R. and to non-powers such as Grenada and Monaco. In fact, it is a tenet so widely understood and imbedded in international law, custom, and convention, that it bears no particular elaboration here.

Contrary to virtually universal practice, the U.S. has opted to unilaterally preempt the rights of many North American indigenous nations to engage in this most fundamental level of internal decision-making. Instead, in pursuit of the interests of their own state rather than those of the nations which are thereby affected, federal policy-makers have increasingly imposed "Indian identification standards" of their own devise. Typically centering upon a notion of "blood quantum" – not especially different in its conception from the eugenics code once adopted by nazi Germany in its effort to achieve "racial purity," or currently utilized by South Africa to segregate blacks and "coloreds" – this aspect of U.S. policy has increasingly wrought havoc with the American Indian sense of nationhood (and often the individual sense of self) over the past century.

The present paper will offer a brief analysis of the motivations underlying this federal usurpation of the American Indian expression of sovereignty, and point out certain implications of it.

Federal Obligations:

The 371 formally ratified treaties entered into by the U.S. with various Indian nations represent the basic real estate documents by which the federal government now claims legal title to most of its landbase. In exchange for the lands ceded by the Indians in perpetuity, the U.S. committed itself to the permanent provision of a range of services to Indian populations (*i.e.:* the citizens of the Indian nations with which the treaty agreements were reached), which would assist them in adjusting their economies and ways-of-life to their newly constricted territories. For example, in the 1794 *Treaty with the Oneida* (also affecting the Tuscarora and Stockbridge Indians), the U.S. guaranteed provision of instruction "in the arts of the miller and sawyer," as well as regular annuities paid in goods and cash, in exchange for a portion of what is now the State of New York.[1] Similarly, the 1804 *Treaty with the Delaware* extended assurances of technical instruction in agriculture and the mechanical arts, as well as annuities.[2] As E.C. Adams frames it:

> Treaties with the Indians varied widely, stipulating cash annuities to be paid over a specified period of time or perpetually; ration and clothing, farming implements and domestic animals, and instruction in agriculture along with other educational opportunities...[And eventually] the school supplemented the Federal program of practical teaching.[3]

The reciprocal nature of such agreements received considerable reinforcement when it was determined, early in the 19th century, that "the enlightenment and civilization of the Indian" might yield – quite aside from any need on the part of the U.S. to honor its international obligations – a certain utility in terms of subordinating North America's indigenous peoples to Euroamerican domination. Secretary of War John C. Calhoun articulated this quite clearly in 1818:

> By a proper combination of force and persuasion, of punishment and rewards, they [the Indians] ought to be brought within the pales of law and civilization. Left to themselves, they will never reach that desirable condition. Before the slow operation of reason and experience can convince them of its superior advantages, they must be overwhelmed by the mighty torrent of our population. Such small bodies, with savage customs and character, cannot, and ought not, to be allowed to exist in an independent society. Our laws and manners ought to supercede their present savage manners and customs...their [treaty] annuities would constitute an ample school fund; and education, comprehending as well as the common arts of life, reading, writing, and arithmetic, ought not to be left discretionary with the parents...When sufficiently advanced in civilization, they would be permitted to participate in such civil and political rights as the respective States.[4]

The utter cynicism involved in Calhoun's position – that of intentionally using the treaty instruments by which the U.S. conveyed recognition of Indian

A group of Navajo children forcibly removed from their homes and families in New Mexico upon their arrival at the Carlisle Indian School in Pennsylvania, *circa* 1885. (Photo by J.N. Choate; *Smithsonian Institution*)

sovereignty as the vehicle upon which to destroy that same sovereignty – speaks for itself. The more important point (for purposes of this study), however, is that a confluence of U.S. strategic interests had congealed around the notion of extending federal obligations to Indians by 1820. The tactic was therefore continued throughout the entirety of the period of U.S. internal territorial conquest and consolidation.[3] By 1900, the federal obligations to Indian nations were therefore quite extensive.

Financial Factors:

As Vine Deloria, Jr., has observed:

> The original relationship between the United States government and the American Indian tribes was one of treaties. Beginning with the establishment of the federal policy toward Indians in the Northwest Ordinance of 1787, which pledged that the utmost good faith would be exercised toward the Indian tribes, and continuing through many treaties and statutes, the relationship has gradually evolved into a strange and stifling union in which the United States

The impact of federal Indian identification policy: the same group of Navajo children after some six months socio-cultural homogenization at the Carlisle School. (Photo by N.J. Choate: *Smithsonian Institution*)

> has become responsible for all of the programs and policies affecting Indian communities.[4]

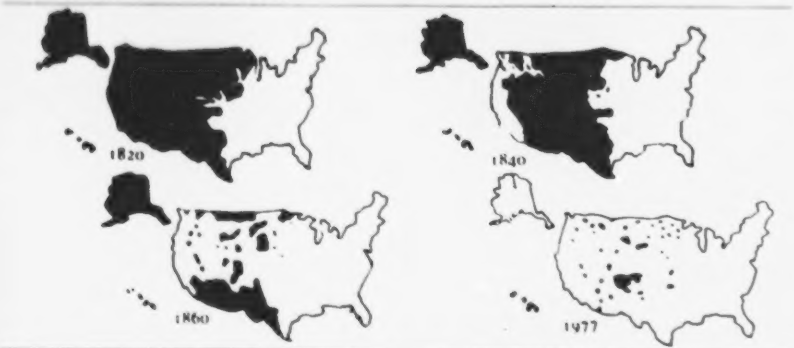
What this meant in practice was that the government was being required to underwrite the cost of a proliferating bureaucratic apparatus overseeing "service delivery" to Indians, a process initiated on April 16, 1818, with the passage of an act (*U.S. Statutes at Large,* 13:461) requiring the placement of a federal agent with each Indian nation, to serve as liaison and to "administer the discharge of Governmental obligations thereto." As the number of Indian groups with which the U.S. held relations had increased, so too had the number of "civilizing" programs and services undertaken, ostensibly in their behalf. This was all well and good during the time-span when it was seen as a politico-military requirement, but by the turn of the century this need had passed. The situation was compounded by the fact that the era of Indian population decline engendered by war and disease had also come to an end; the population eligible for per capita benefits, which had been reduced to a quarter-million by the 1890s, could be expected to rebound steadily in the 20th century. With its land-base secured, the U.S. was casting about for a satisfactory mechanism to avoid paying the ongoing costs associated with its acquisition.

The most obvious route to this end, of course, lay in simply and overtly refusing to comply with the terms of the treaties, thus abrogating them.[7] The problems in this regard were, however, both two-fold and extreme. First, the deliberate invalidation of the U.S. treaties with the Indians would (obviously) tend to simultaneously invalidate the legitimacy which the country attributed to its occupancy of much of North America. Second, such a move would immediately negate the useful and carefully nurtured image the U.S. had cultivated of itself as a country of progressive laws rather than raw force. The federal government had to *appear* to continue to meet its commitments, while at the same time avoiding them, or at least containing them at some acceptable level. A devious approach to the issue was needed.

This was found in the so-called "blood quantum" or "degree of Indian blood" standard of American Indian identification which had been adopted by Congress in 1887, as part of the General Allotment Act (25 U.S.C.A. 331, popularly known as the "Dawes Act," after its sponsor, Massachusetts Senator Henry Dawes). The function of this piece of legislation was to expedite the process of Indian civilization by unilaterally dissolving their collectively (*i.e.*: nationally) held reservation land holdings. Reservation lands were reallocated in accordance with the "superior" (*i.e.*: Euroamerican) concept of property: *individually* deeded land parcels, usually of 160 acres each. Each Indian, identified as being those documentably of *one-half or more Indian blood,* was entitled to receive title in fee of such a parcel; all others were simply disenfranchised altogether. Reserved Indian land which remained unallotted after all "blooded" Indian had received their individual parcels was to be declared "surplus," and opened up for non-Indian use and occupancy.

Needless to say, there were nowhere near enough Indians meeting the act's genetic requirements to absorb by individual parcel the quantity of acreage involved in the formerly reserved land areas. Consequently, between 1887 and 1934, the aggregate Indian landbase within th U.S. was "legally" reduced from about 138 million acres to about 48 million.[8] Moreover, the allotment process itself had been manipulated in such a way that the worst reservation acreage tended to be parceled out to Indians, while the best was opened to non-Indian homesteading and corporate use; nearly 20 million of the acres remaining in Indian hands by the latter year was arid or semi-arid, and thus marginal or useless for agricultural purposes.[9]

By the early 1900s, then, the eugenics mechanism of blood quantum had already proven itself such a boon in the federal management of its Indian affairs that it was generally adapted as the "eligibility factor" triggering entitlement to *any* federal service from the issuance of commodity rations to



The diminishment of Indian lands within the United States since the early 19th century has been coupled directly to federal policies such as those concerning Indian identity. These maps are derived from Charles C. Royce, *Indian Land Cessions in the United States*, U.S. Bureau of Ethnography, 1890.

health care, annuity payment and educational benefits. If the federal government could not repeal its obligations to Indians, it could at least act to limit their number, thereby diminishing the costs associated with underwriting their entitlements on a per capita basis. Concomitantly, it must have seemed logical that if the overall number of Indians could be kept small, the administrative expenses involved in their service program might also be held to a minimum. Much of the original impetus towards the federal preemption of the sovereign Indian prerogative of defining "who's Indian," and the standardization of the racist degree-of-blood method of Indian identification, derived from the budgetary considerations of a federal government anxious to avoid paying its bills.

Other Economic Factors:

As the example of the General Allotment Act, used above, clearly demonstrates, other economic determinants than the mere outflow of cash from the federal treasury figure into the federal utilization of blood quantum. The huge windfall of land expropriated by the U.S. as a result of the act was only the tip of the iceberg. For instance, in constricting the acknowledged size of Indian populations, the government could technically meet its obligations to reserve "first rights" to water usage for Indians while simultaneous siphoning off artificial "surpluses" to non-Indian agricultural, ranching, municipal and industrial use in the arid west.[10] The same principle pertains to the assignment of fishing quotas in the Pacific Northwest, a matter directly related to the development of a lucrative non-Indian fishing industry there.[11]

By the 1920s, it was also becoming increasingly apparent that much of the agriculturally worthless terrain left to Indians after allotment lay astride rich deposits of natural resources such as coal, copper, oil and natural gas; later in the century, it was revealed that some 60% of all "domestic" uranium reserves also lay beneath reservation lands. It was therefore becoming imperative, from the viewpoint of federal and corporate economic planners, to gain unhindered access to these assets. Given that it would have been just as problematic to simply seize the resources as it would have been to abrogate the treaties, another expedient was required. This assumed the form of legislation unilaterally extending the responsibilities of citizenship (though not all the rights; Indians are still regulated by about 5,000 more laws than other citizens) over all American Indians within the U.S.

> Approximately two-thirds of the Indian population had citizenship conferred upon them under the 1877 Allotment Act, as a condition of the allotment of their holdings...[In 1924] an act of Congress [8 U.S.C.A. 1401 (a)(2)] declared all Indians to be citizens of the U.S. and of the states in which they resided...[12]

The Indian Citizenship Act greatly confused the identification and loyalties even of many of the blooded and federally certified Indians insofar as it was held to hold legal force, and to carry legal obligations, *whether or not* any given Indian or group of Indians wished to be a U.S. citizen. As for the host of non-certified, mixed-blood people residing in the U.S., their status was finally "clarified"; they had been definitionally absorbed into the American mainstream at the stroke of the Congressional pen. And, despite the fact that the act technically left certified Indians occupying the status of citizenship in their own indigenous nation as well as in the U.S. – a "dual form" of citizenship, so awkward as to be sublime – the juridical door had been opened by which the weight of Indian obligation would begin to accrue more to the U.S. than to themselves. Resource negotiations would henceforth be conducted between "American citizens" rather than between representatives of separate nations, a context in which federal and corporate arguments "to the greater good" could be predicted to prevail.

In 1934, the effects of the citizenship act were augmented by the passage of the Indian Reorganization Act (25 U.S.C.A. §461; also known as the "Wheeler-Howard Act," after its Senate and House sponsors). The expressed purpose of this law was to finally and completely usurp the traditional mechanisms of American Indian governance (*e.g.:* the traditional chiefs, council of elders, etc.), replacing them with a system of federally approved and regulated "tribal councils." These councils, in turn, were consciously structured more along the lines of corporate boards than of governmental entities. As Section 17 of the IRA, which spells out the council functions, puts the matter:

> [An IRA charter] may convey to the incorporated tribe the power to purchase, take by gift, or bequest, or otherwise, own, hold, manage, operate, and dispose of property of every description, real and personal, including the power to purchase restricted Indian lands and to issue in exchange for corporate property, and such further powers as may be incidental to the conduct of corporate business, not inconsistent with the law.

Indeed, since the exercise of such typical governmental attributes as jurisdiction over criminal law had already been stripped away from the council by legislation such as the 1885 Major Crimes Act (18 U.S.C.A. § 1153), there has been very little for the IRA form of Indian government to do *but* sign off on leasing and other business arrangements with external interests. The situation was/is compounded by the fact that grassroots Indian resistance to the act's "acceptance" on many reservations was overcome by federal manipulation of local referenda.[13] This has left the IRA governments in the position of owing Washington rather than their supposed constituents for whatever legitimacy they may possess. All in all, it was and is a situation made to order for the rubber-stamping of plans integral to U.S. economic development, at the direct expense of Indian nations and individual Indian people.

This is readily born out by the fact that, as of 1984, American Indians received, on the average, less than 20% of the market royalty rates (*i.e.:* the rates paid to non-Indians) for the extraction of minerals from their land. As Winona LaDuke observes:

> By official census counts, there are only about 1 1/2 million Indians in the United States. By conservative estimates a quarter of all the low sulphur coal in the U.S. lies under our reservation land. About 15% of all the oil and natural gas lies there, as well as two-thirds of the uranium. 100% of all U.S. uranium production since 1955 has been on Indian land. And we have a lot of copper, timber, water rights and other resources, too. By any reasonable estimation, with this small number of people and vast amount of resources, we should be the richest group in the United States. But we are the poorest. Indians have the lowest per capita income of any population group in the U.S. We have the highest rate of unemployment and lowest level of educational attainment. We have the highest rates of malnutrition, plague disease, death by exposure and infant

> mortality. On the other hand, we have the shortest life-span. Now, I think this says it all. Indian wealth is going somewhere, and that somewhere is definitely not to Indians. I don't know your definition of colonialism, but this certainly fits into mine.[14]

In sum, the financial advantages incurred by the U.S. in its appropriation of the definition of Indian identity have been neatly joined to even more powerful economic motivators during this century. The previously noted reluctance of the federal government to pay its bills cannot be uncoupled from its desire to profit from the resources of others.

Contemporary Political Factors:

The utilization of treaties as instruments by which to begin the subordination of American Indian nations to U.S. hegemony, as well as subsequent legislation such as the Major Crime Act, the General Allotment Act, the Indian Citizenship Act, the Indian Reorganization Act, and the Termination Act all carry remarkably clear political overtones. This, to be sure, is the language of the colonizer and the colonized, to borrow a phrase from Albert Memmi,[15] and in each case the federal manipulation of the question of American Indian identity has played its role. These examples, however, may rightly be perceived as being both historical and as parts of the "grand scheme" of U.S. internal colonialism (or "Manifest Destiny," as it was once called).

Today, the function of the Indian identity question appears to reside at the less rarified level of maintaining the status quo. In the first instance, it goes to the matter of keeping the aggregate Indian population at less than 1% of the overall U.S. population, and thus devoid of any potential electoral power. In the second instance, and perhaps of equal importance, it goes to the classic "divide and conquer" strategy of keeping Indians at odds with one another, even within their own communities. As Tim Giago, conservative editor of the *Lakota Times*, asks:

> Don't we have enough problems trying to unite without...additional headaches? Why must people be categorized as full-bloods, mixed bloods, etc.? Many years ago, the Bureau of Indian Affairs decided to establish blood quanta for the purpose of [tribal] enrollment. At that time, blood quantum was set at one-fourth degree for enrollment. Unfortunately, through the years, this caused many people on the reservation to be categorized and labeled....[The] situation [is] created solely by the BIA, with the able assistance of the Department of Interior.[16]

What has occurred is that the limitation of federal resources allocated to meeting U.S. obligations to American Indians has become so severe that Indians themselves have increasingly begun to enforce the race codes excluding the genetically marginalized from both identification as Indian citizens and consequent entitlements. In theory, such a posture leaves greater per capita shares for all remaining "bona fide" Indians. But, as American Indian Movement activist Russell Means has pointed out:

> The situation is absurd. Our treaties say nothing about your having to be such-and-such a degree of blood in order to be covered. No, when the federal government made its guarantees to our nations in exchange for our land, it committed to provide certain to services to us as *we* defined ourselves. As nations, and as *people*. This seems to have been forgotten. Now we have Indian people who spend most of their time trying to prevent other Indian people from being recognized as such, just so that a few more crumbs – crumbs from the federal table – may be available to them, personally. I don't have to tell you that this isn't the Indian way of doing things. The Indian way would be to get together and demand what is coming to each and every one of us, instead of trying to cancel each other out. We are acting like colonized peoples, like subject peoples....[17]

The nature of the dispute has followed the classic formulation of Frantz Fanon, wherein the colonizer contrives issues which pit the colonized against one another, fighting viciously for some presumed status within the colonial structure, never having time or audacity enough to confront their oppressors.[18] In the words of Stella Pretty Sounding Flute, a member of th Crow Creek bank of Lakota, "My grandmother used to say that Indian blood was getting all mixed up, and some day there would be a terrible mess....[Now] no matter which way we turn, the white man has taken over."[19]

The problem, of course, has been conscientiously exacerbated by the government, through its policies of leasing individual reservation land parcels to non-Indians, increasingly "checkerboarding" tribal holding since 1900. Immediate economic consequences aside, this has virtually insured that a sufficient number of non-Indians would be resident to reservations that intermarriage would steadily result. During the 1950s, the federal relocation program – in which reservation-based Indians were subsidized to move to cities, where they might be anticipated as being subsumed within vastly larger non-Indian populations – accelerated the process of "biological hybridization." Taken in combination with the ongoing federal insistence that "Indian-ness" could be measured *only* by degree of blood, these policies tend to speak for themselves.

Even in 1972, when, through the Indian Education Act (86 *Stat*. 334), the government seemed finally to be abandoning blood quantum, there was a hidden agenda. As Lorelei DeCora (Means), a former Indian education program coordinator, puts it:

> The question was really one of control, whether Indians would ever be allowed to control the identification of their own group members or citizens. First there was this strict blood quantum thing, and it was enforced for a hundred years, over the strong objections of a lot of Indians. Then, when things were sufficiently screwed up because of that, the feds suddenly reversed themselves completely, saying its all a matter of *self*-identification. Almost anybody who wants to can just walk in and announce that he or she is Indian – no familiarity with tribal history, or Indian affairs, community recognition, or anything else really required – and, under the law, there's not a lot that Indians can do about it. The whole thing is suddenly just *laissez faire*, really out of control. At that point, you really *did* have a lot of people showing up claiming that one of their ancestors, seven steps removed, had been some sort of "Cherokee princess." And we were obliged to accept that, and provide services. Hell, if all of that was real, there are more Cherokees in the world than there are Chinese.[20]

Predictably, Indians of all perspectives on the identity question reacted strongly against such gratuitous dilution of themselves. The result was a broad rejection of what was perceived as "the federal attempt to convert us from being the citizens of our own sovereign nations, into benign members of some sort of all-purpose U.S. minority group, without sovereign rights." [21] For its part, the government, without so much as a pause to consider the connotations of the word "sovereign" in this connection, elected to view such statements as an *Indian* demand for resumption of the universal application of the blood quantum standard. Consequently, the Reagan administration has, during the 1980s, set out to gut the Indian Education Act,[22] and to enforce degree of blood requirements for federal services, such as those of the Indian Health Service.[23]

At this juncture, things have become such a welter of confusion that:

> The Federal government, State governments and the Census Bureau all have different criteria for defining "Indians" for statistical purposes, and even Federal criteria are not consistent among Federal agencies. For example, a State desiring financial aid to assist Indian education receives the aid only for the number of people

AIM Leader Russell Means during the 1972 Trail of Broken Treaties occupation of the Bureau of Indian Affairs Building in Washington, D.C. Control of Indian identity was a major issue of the demonstration and one of the Trail's Twenty Points. (Photo: *Akwesasne Notes*)

> with one-quarter or more Indian blood. For preference in hiring, enrollment records from a Federally recognized tribe are required. Under regulations for law and order, anyone of "Indian descent" is counted as an Indian. If the Federal criteria are inconsistent, State guidelines are [at this point] even more chaotic. In the course of preparing this report, the Commission contacted several States with large Indian populations to determine their criteria. Two States accept the individual's own determination. Four accept individuals as Indian if they were "recognized in the community" as Native Americans. Five use residence on a reservation as criteria. One requires one-quarter blood, and still another uses the Census Bureau definition that Indians are who they say they are.[24]

This, without doubt, is a situation made to order for conflict, among Indians more than anyone else. Somehow, it is exceedingly difficult to imagine that the government would wish to see things turn out any other way.

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Implications:

The eventual outcome of federal blood quantum policies can be described as little other than genocidal in their final implications. As American Studies scholar Patricia Nelson Limerick recently summarized the process:

> Set the blood quantum at one-quarter, hold to it as a rigid definition of Indians, let intermarriage proceed as it had for centuries, and eventually Indians will be defined out of existence. When that happens, the federal government will be freed of its persistent "Indian problem" [25]

Already , this conclusion receives considerable validation in the experience of the Indians of California, such as the Juaneño. Pursuant to the "Pit River Consolidated Land Settlement" of the 1970s, in which the government purported to "compensate" many of small California bands for lands expropriated during the course of non-Indian "settlement" in that state (at less than 50 cents per acre), the Juaneño and a number of other "Mission Indians" were simply declared to be "extinct." This policy was pursued despite the fact that substantial numbers of such Indians were known to exist, and that the government was at the time issuing settlement checks to them. The tribal rolls were simply ordered closed to *any* new additions, despite the fact that many of the people involved were still bearing children, and their population might well have been expanding. It was even suggested in some instances that children born after an arbitrary cut-off date should be identified as "Hispanic" or "Mexican" in order that they benefit from federal and state services to minority groups.[26]

When attempting to come to grips with the issues raised by such federal policies, the recently "dissolved" California groups, as well as a number of previously unrecognized ones such as the Gay Head Wampanoags (long described as extinct), confronted a Catch-22 situation worthy of Joseph Heller. This rested in the federal criteria for recognition of Indian existence in the present day:

1. An Indian is a member of any federally-recognized Indian Tribe. To be federally-recognized, an Indian Tribe must be comprised of Indians.

2. To gain federal recognition, an Indian Tribe must have a land base. To secure a land base, an Indian Tribe must be federally recognized.[27]

As a Shoshone activist, Josephine C. Mills, put it in 1964, "There is no longer any need to shoot down Indians in order to take away their rights and land [or to wipe them out]...legislation is sufficient to do the trick legally."[28] The notion of genocidal implications in all this receives firm reinforcement from the federal propensity, during the second half of this century, to utilize residual Indian landbases as dumping grounds for many of the more virulently toxic by-products of its advanced technology and industry.[29] By the early '70s, this practice had become so pronounced that the Four Corners and Black Hills Regions, two of the more heavily populated locales (by Indians) in the country, had been semi-officially designated as prospective "National Sacrifice Areas" in the interests of projected U.S. energy development.[30] This, in turn, provoked Russell Means to observe that such a move would turn the Lakota, Navajo, Laguna and other native nations into "national sacrifice peoples."[31]

American Indian Response:

Of late, there have been encouraging signs that American Indians of many perspectives and political persuasions have begun to arrive at common conclusions regarding the use to which the federal government has been putting their identity, and the compelling need for Indians to finally reassert complete control over this vital aspect of their lives. For instance, Dr. Frank Ryan, a liberal and rather establishmentarian Indian who has served as the director of the federal Office of Indian Education, began, during the early 1980s, to reach some rather hard conclusions about the policies of his employers. Describing the federal blood quantum criteria for benefits eligibility in the educational arena as "a racist policy," Ryan went on to term it as nothing more than "a shorthand method for denying Indian children admission to federal schools [and other programs]."[32] He went on to conclude that, "The power to determine tribal membership has always been an essential attribute of inherent tribal sovereignty," and called for abolition of federal guidelines on the question of Indian identity without *any* lessening of federal obligations to the individuals and group affected.[33] The question of the [re]adoption of blood quantum standards by the Indian Health Service, proposed during the '80s by the Reagan administration, has served as even more of a catalyst. The National Congress of American Indians, never a bastion of radicalism, took up the issue at its 43rd Annual Convention, in October of 1986.

The NCAI produced a sharply worded statement rejecting federal identification policy:

> [T]he federal government, in an effort to erode tribal sovereignty

> and reduce the number of Indians to the point where they are politically, economically and culturally insignificant, [is being censured by] many of the more than 500 Indian leaders [attending the convention].[34]

The statement went on to condemn:

> ...a proposal by the Indian Health Service to establish blood quotas for Indians, thus allowing the federal government to determine who is Indian and who is not, for the purpose of health care. Tribal leaders argue that *only* the individual tribes, *not* the federal government, should have this right, and many are concerned that this debate will overlap [as it has, long since] into Indian education and its regulation as well [emphasis added].[35]

Charles E. Dawes, Second Chief of the Ottawa Indian Tribe of Oklahoma, took the convention position much further at about the same time:

> What could not be completed over a three hundred year span [by force of arms] may now be completed in our life-span by administrative law...What I am referring to is the continued and expanded use of blood quantum to determine eligibility of Indian people for government entitlement programs...[in] such areas as education, health care, management and economic assistance...[obligations] that the United States government imposed upon itself in treaties with sovereign Indian nations...We as tribal leader made a serious mistake in accepting [genetic] limits in educational programs, and we must not make the same mistake again in health programs. On the contrary, we must fight any attempt to limit any program by blood quantum every time there is a mention of such a possibility...we simply cannot give up on this issue – ever...Our commitment as tribal leaders must be to eliminate any possibility of *genocide* for our people by administrative law. We must dedicate our efforts to insuring that our Native American people[s] will be clearly identified without reference to blood quantum...and that our sovereign Indian Nations will be recognized as promised [emphasis added].[36]

On the Pine Ridge Reservation in South Dakota, the Oglala Lakota have become leaders in totally abandoning blood quantum as a criterion for tribal enrollment, opting instead to consider factors such as residency on the reservation, affinity to and knowledge of, as well as service to the Oglala people.[37] This follows the development of a recent "tradition" of Oglala militancy in which tribal members played a leading role in challenging federal conceptions of Indian identity during the 1972 Trail of Broken Treaties takeover of BIA headquarters in Washington, and seven non-Indian members of the Vietnam Veterans Against the War were naturalized as citizens of the "Independent Oglala Nation" during the 1973 siege of Wounded Knee.[38] In 1986, at a meeting of the United Sioux Tribes in Pierre, South Dakota, Oglala representatives lobbied the leaders of other Lakota reservations to broaden their own enrollment criteria beyond federal norms, despite recognition that, "in the past fifty years, since the Indian Reorganization Act of 1934, tribal leaders have been reluctant to recognize blood from individuals from other tribes [or any one else]."[39]

In Alaska, the Haida have produced a new draft constitution which offers a full expression of indigenous sovereignty, at least insofar as the identity of sovereignty and citizenry is concerned. The Haida draft begin with those who are not acknowledged as members of the Haida nation and posits that all those who marry Haidas will also be considered eligible for naturalized citizenship (just like in any other nation). The children of such unions would also be Haida citizens from birth, regardless of their degree of Indian blood, and children adopted by Haidas would also be considered citizens.[40] On Pine Ridge, a similar "naturalization" plank had surfaced in the 1982 TREATY platform upon which Russell Means attempted to run for the Oglala Lakota tribal presidency before being disqualified at the insistence of the BIA.[41]

An obvious problem which might be associated with this trend is that even though Indian nations begin to recognize their citizens by their own standards rather than those of the federal government, the government may well refuse to recognize the entitlement of unblooded tribal members to the same services and benefits as any other. In fact, there is every indication that this is the federal intent, and such a disparity of "status" stands to heighten tensions among Indians, destroying their fragile rebirth of unity and solidarity before it gets off the ground. Federal policy in this regard is, however, also being challenged.

Most immediately, this concerns the case of Dianne Zarr, an enrolled member of the Sherwood Valley Pomo Band of Indians, who is of less than one-quarter degree of Indian blood. On September 11, 1980, Ms. Zarr filed an application for higher educational grant benefits, and was shortly rejected as not meeting quantum requirements. Zarr went through all appropriate appeal procedures before filing, on July 15, 1983, a suit in federal court, seeking to compel award of her benefits. This was denied by the district court on April 2, 1985. Zarr appealed and, on September 26, 1985, the lower court was reversed on the basis of the "Snyder Act" (25 U.S.C. S297), which precludes discrimination based solely on racial criteria.[42] Zarr received her grant, setting a very useful precedent for the future.

Still, realizing that the utility offered by U.S. courts will necessarily be limited, a number of Indian organizations have recently begun to seek to bring international pressure to bear on the federal government. The Indian Law Resource Center, National Indian Youth Council and, for a time, the International Indian Treaty Council and World Council of Indigenous peoples have repeatedly taken Native American issues before the United Nations Working Group on Indigenous Populations (a component of the U.N. Commission on Human Rights) in Geneva, Switzerland, since 1977. Another forum which has been utilized for this purpose has been the Fourth Russell International Tribunal on the Rights of the Indians of the Americas, held in Rotterdam, Netherlands, in 1980. Additionally, delegation from various Indian nations and organizations have visited, often under auspices of the host governments, more than 30 countries during the past decade.[illegible]

Conclusion:

The history of the U.S. imposition of its standards of identification upon American Indians is particularly ugly. Its cost to Indians has involved millions of acres of land, the water by which to make much of this land agriculturally useful, control over vast mineral resources which might have afforded them a comfortable standard of living, and the ability to form themselves into viable and meaningful political blocks at any level. Worse, it has played a prominent role in bringing about their generalized psychic disempowerment; if one is not allowed even to determine for one's self, or within one's peer group, the answer to the all-important question "who am I?," what possible personal power can one feel he/she possesses? The negative impacts, both physically and psychologically, of this process upon succeeding generations of Native Americans in the U.S. are simply incalculable.

The blood quantum mechanism most typically used by the federal government to assign identification to individuals over the years is as racist in its form as any conceivable policy. It has brought about the systematic marginalization and eventual exclusion of many more Indians from their own cultural-national designation than it has retained. This is all the more apparent when one considers that, while one-quarter degree of blood has been the norm used in defining Indian-ness, the quantum has varied from time-to-time and place-to-place; one-half blood was the standard utilized in the case of the Mississippi Choctaws and adopted in the Wheeler-Howard Act, one-sixty-fourth was utilized in establishing the Santee rolls in Nebraska. It is hardly unnatural, under the circumstances, that federal policy has set off a ridiculous game of one-upsmanship in Indian Country: "I'm more Indian than you" and "You aren't Indian enough to say (or do, or think) that" have become common assertions during the second half of the 20th century.

The restriction of federal entitlement funds to cover only the relatively few Indians who meet quantum requirements, essentially a cost-cutting policy at its inception, has served to exacerbate tensions over the identity issue among Indians. It has established a scenario in which it has been perceived as profitable for one Indian to cancel the identity of his/her neighbor as a means of receiving his/her entitlement. Thus, a bitter divisiveness has been built into Indian communities and national policies, sufficient to preclude their achieving the internal unity necessary to offer any serious challenge to the status quo. At every turn, U.S. practice *vis a vis* American Indians is indicative of an advanced and extremely successful system of colonialism.

The outcome of the particular process examined in this paper can only be that Indians, both as peoples and as individuals, will eventually be defined out of existence. Arithmetically, it is calculable that by some point in the next century, the simple act of suddenly enforcing the quarter-blood standards across the board would result in the aggregate Indian population *appearing* to be near zero. This, in turn, would allow the federal government to "justifiably" close the books on Indians, write off all remaining obligations to such people, and declare them extinct (as has already been done with the Juaneno and other groups). In this sense, federal control and manipulation of the criteria of Indian identity carries obvious implications, not only of colonialism, but of genocide.

Fortunately, increasing numbers of Indians are waking up to the fact that this is the case. The recent analysis and positions assumed by such politically diverse Indian nations, organizations and individuals as Frank Ryan and Russell Means, the National Congress of American Indians and the Indian Law Resource Center, the Haida and the Oglala, are a very favorable sign. The willingness of the latter two nations to simply defy federal standards and adopt identification and enrollment policies in line with their own interests and traditions is particularly important. Recent U.S. court decisions, such as that in the Zarr case, and growing international attention and concern over the circumstances of Native Americans are also hopeful indicators that things may be at long last changing for the better.

We are currently at something of a crossroads. If American Indians are able to continue the positive trend in which they reassert their sovereign prerogative to control the criteria of their own membership, we may reasonably assume that they will be able to move onward, into a true process of decolonization and reestablishment of themselves as functioning national entities. The alternative, of course, is that they will fail, continue to be duped into bickering over the question of "who's Indian" in light of federal guidelines, and thus facilitate not only their own continued subordination, expropriation and colonization, but ultimately their own statistical extermination.

End Notes

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2 *Ibid.*, pp. 7-9.

3 Adams, E.C., *American Indian Education: Government Schools and Economic Progress*, King's Crown Press, NY, 1946, p. 30-1.

4 Calhoun is quoted in *American State Papers: Indian Affairs* (Volume II), Wilmington, Delaware, 1972, pp. 183-4.

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6 Deloria, Vine Jr., "The Place of Indians in Contemporary Education," *American Indian Journal*, Vol. 2, No. 21, Institute for the Development of Indian Law, Washington, D.C., February 1976, p. 2.

7 This strategy was actually tried in the wake of the passage of House Concurrent Resolution 108 (67 *Stat*. B132, otherwise referred to as the "Termination Act") in June of 1953. Predictably, the federal dissolution of American Indian nations such as the Klamath and Menominee so tarnished th U.S. image that implementation of the policy was shortly suspended (albeit the law remains on the books).

8 Collier, John, *Memorandum, Hearings on H.R. 7902 before the House Committee on Indian Affairs*, (73rd Congress, 2d Session) U.S. Department of the Interior, Washington, D.C., 1934, pp. 16-8.

9 Deloria, Vine Jr., and Clifford M. Lytle, *American Indians, American Justice*, University of Texas Press, Austin, 1983, p. 10.

10 See Hundley, Norris C. Jr., "The Dark and Bloody Ground of Indian Water Rights," in Roxanne Dunbar Ortiz (ed.), *Economic Development in Indian Reservations*, University of New Mexico Press, 1979.

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14 LaDuke, Winona, Presentation at International Women' Week activities, University of Colorado at Boulder, March 13, 1984; tape on file.

15 Memmi, Albert, *The Colonizer and the Colonized,* Beacon Press, Boston, 1967.

16 Giago, Tim, "Blood Quantum is a Degree of Discrimination," *Notes From Indian Country, Vol. 1,* State Publishing Co., Pierre, S.D., 1984, p. 337.

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18 See Fanon, Frantz, *The Wretched of the Earth,* Grove Press, NY, 1966.

19 Quoted in Martz, Ron, "Indians decry verification plan for federally-funded health care," *Cox News Service,* Pierre, S.D., October 7, 1986.

20 DeCora (Means), Lorelei, statement on radio station KILI, Porcupine, S.D., October 12, 1986.

21 Means, Ted, statement before the South Dakota Indian Education Association, Pierre, S.D., November 16, 1975.

22 See Jones, R., *American Indian Policy: Selected Major Issues in the 98th Congress,* Issue Brief No. 1B83083, Library of Congress, Government Division, Washington, D.C. (updated version, 2/6/84), pp. 3-4.

23 See Martz, *op. cit.*

24 American Indian Policy Review Commission, *Final Report, Vol. 1.,* (submitted to Congress on May 17, 1977), U.S. Government Printing Office, Washington, D.C., 1977, p. 89.

25 Limerick, Patricia Nelson, *The Legacy of Conquest: The Unbroken Past of the American*

West, W.W. Norton & Co., NY, 1987, p. 338.

26 The author is an enrolled Juaneño, as is her eldest son. Her younger son, born after the closing of the Juaneño rolls, is not federally recognized as an Indian, despite the fact that his genealogy, cultural background, etc., is identical to that of his brother. The "suggestions" mentioned in the text were made to the author by a federal employee in 1979. It is estimated that, by the middle of the coming century, no one recognized as being a Juaneño will still be living.

27 Native American Consultants, Inc., *Indian Definition Study,* contracted pursuant to P.L. 95-561, Title IV, Section 1147, submitted to the Office of the Assistant Secretary of Education, U.S. Department of Education, Washington, D.C., January 1980, p. 2.

28 Quoted in Armstrong, Virginia I., *I Have Spoken: American History Through the Voices of Indians,* Pocket Books, NY, 1975, p. 175.

29 See Churchill, Ward, and Winona LaDuke, "Native America: The Political Economy of Radioactive Colonization," *Journal of Ethnic Studies,* Vol. 13, No. 3, Fall 1985, at p. 107.

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39 "Indians maintain U.S. trying to erode tribal sovereignty," *op. cit.*

40 Draft, *Haida Constitution,* circa 1982. Xerox copy provided to the author by Ms. Pam Colorado.

41 *TREATY: The Campaign of Russell Means for the Presidency of the Oglala Sioux Tribe,* Porcupine, S.D., 1982, p. 3.

42 *Zarr v. Barlow, et al.,* No. 85-2170, U.S. Ninth Circuit Court of Appeals, District Court for the Northern District of California, Judge John P. Vukasin presiding.

43 These have included Austria, Cuba, Nicaragua, Poland, East Germany, Hungary, Rumania, Switzerland, Algeria, Grenada, El Salvador, Columbia, Tunisia, Libya, Syria, Jordan, Iran, the Maori of New Zealand, New Aotara (Australia), Belize, Mexico, Costa Rica, Guinea, Kenya, Micronesia, th U.S.S.R., Finland, Norway, Sweden, Canada, Great Britain, Netherlands, France, Belgium, Japan, West Germany, Bulgaria, Yugoslavia, and Papua (New Guinea). The list here is undoubtedly incomplete.

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The Black Hills Are Not For Sale

A Summary of the Lakota Struggle for the 1868 Treaty Territory

by Ward Churchill

One of the more important and better known issues involving questions of indigenous sovereignty in North America is the so-called Black Hills land claim advanced by the Lakota (the "Western Sioux" or "Teton Dakota"; Oglala, Brulé, Hunkpapa, Minneconjou, Sans Arc, Blackfoot and Two Kettles Bands) Nation over the past century. This essay will attempt to summarize the history of the struggle for the Black Hills, and explain the critical nature of its ultimate resolution upon American Indian rights to land and self-determination throughout the United States.

The Treaties of Fort Laramie

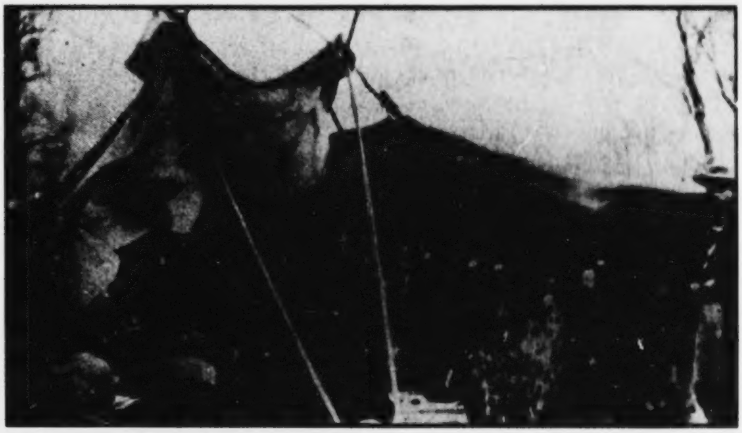
In 1851, the U.S. entered into the first *Fort Laramie Treaty* with the Lakota, Cheyenne, Arapaho, Crow and other indigenous nations of the northern plains region. In large part, the treaty was an attempt by the federal government to come to grips with the matter of Indian territorality within the vast "Louisiana Purchase" area it had acquired from France earlier in the century. The Lakota were formally recognized in the 1851 treaty instrument as being entitled to a huge tract centering upon their sacred lands, called *Paha Sapa* (the Black Hills), including virtually all of the present states of South Dakota and Nebraska, as well as appreciable portions of Kansas, North Dakota, Montana and Wyoming, and a small portion of Colorado. In sum, the U.S. acknowledged Lakota sovereignty and national "ownership" of between 6 and 7% of the total land area now comprising the 48 contiguous states of the United States.[1]

It was not long, however, before gold and silver were discovered in the Virginia City area of Montana Territory, and a "short route" to these ore fields began to be considered essential to a U.S. economy beset by the demands of the Civil War (1861-65). Hence, at least as early as 1864, the government entered into open violation of the 1851 treaty, sending troops to construct a series of forts intended to secure what was called the "Bozeman Trail," directly through the western portion of the Lakota homeland. The Lakota, under the political leadership of Red Cloud, an Oglala, responded by forming an alliance with the Cheyenne and Arapaho, bringing their joint military force to bear upon the trail during 1866-67. By 1868, the U.S., having suffered several defeats in the field, and finding its troops trapped within their forts, sued for peace.[2] This led to the second *Fort Laramie Treaty* in the same year, in which (in exchange for being allowed to withdraw its remaining soldiers in one piece) the federal government once again recognized Lakota sovereignty and national territorality, this time establishing a "Great Sioux Reservation" encompassing all of contemporary South Dakota west of the east bank of the Missouri River, and acknowledging that the "Greater Sioux Nation" was entitled to permanent use of "Unceded Indian Territory" involving large portions of Nebraska, Wyoming, Montana and North Dakota.[3] Further, the new treaty committed U.S. troops to prevent non-Indians from trespassing in Lakota territory, specified that it did nothing to "abrogate or annul" Lakota land rights acknowledged in the 1851 treaty,[4] and provided that:

> No [subsequent] treaty for cession of any portion of the reservation herein described which may be held in common shall be of any validity or force as against said Indians, unless executed and signed by at least three-fourths of all adult male Indians [the gender provision was a U.S., rather than Lakota, stipulation], occupying or interested in the same.[5]

All might have been well in the aftermath of the 1868 treaty had a Catholic priest, Jean de Smet, not ventured illegally into the Black Hills and afterwards reported to the *Sioux Falls (South Dakota) Times* that he had discovered gold therein.[6] In short order, this led to the government's reinforcing Lt. Colonel George Armstrong Custer's elite 7th Cavalry Regiment and violating *both* the 1851 and 1868 treaties by sending this heavy military force directly into the Hills on a "fact-finding" mission. Custer's 1874 report that he too had found gold in the *Paha Sapa*, much ballyhooed in the eastern press, led to another military foray into the Hills – the Jenny Expedition – during the summer of 1875.[7] The fact that there was gold in the heart of Lakota Territory, in their most holy of places, was thus confirmed to the satisfaction of Washington officials.

With that, the government sent yet another treaty commissionto meet with the Lakota leadership, this time in an effort to negotiate purchase of the Black Hills.[8] When the Lakotas refused to sell (as was clearly their right, under either or both treaties), Washington responded by transferring its relations with them from the Bureau of Indian Affairs (BIA) to the Department of War. All Lakotas were ordered to gather at their "assigned agencies" within the Great Sioux Reservation by not later than the end of January 1876, although they plainly had every right to be anywhere they chose within their treaty territory; those who failed to comply with this utterly unlawful federal directive were informed that *they* would be viewed as having broken the peace and consequently treated as "hostiles." Meanwhile, President Ulysses S. Grant completed the government's raft of treaty violations by secretly instructing his



Leadership of the Lakota Nation during negotiations with U.S. commissioners prior to signing the second Ft. Laramie Treaty, April 1968. (Photo: *Smithsonian Institution*)

army commanders to disregard U.S. obligations to prevent the wholesale invasion of the Lakota heartland by non-Indian miners.[9]

"The Great Sioux War"

For their part, the Lakotas withdrew into the remote Powder River county of southeastern Montana, a part of their unceded territory, to discuss what they should do next. In turn, the army used this "gesture of hostility" as a pretext for launching a massive assault upon them, with the expressed intent of "crushing Sioux resistance completely, once and for all." The U.S. objective in this was, of course, to simply obliterate the Lakota ability to effectively oppose federal expropriation of the Black Hills. The mechanism chosen to accomplish this task was a three-pronged campaign consisting of some 1,500 men each under Major Generals George Crook (coming into the Powder River Country from the south) and Alfred Terry (from the east). Another 1,000 men under Colonel John Gibbon were to approach from the west, and the Lakotas (as well as their Cheyenne and Arapaho allies) were to be caught between these forces and destroyed.[10]

As it turned out, the army's plan failed completely. On June 17, 1876, Crook's entire column was met by an approximately equal number of Lakotas led by Crazy Horse, an Oglala. The soldiers were quickly defeated and sent into full retreat.[11] This was followed, on June 25, by the near annihilation of Custer's 7th Cavalry – attached to Terry's column – in the valley of the Little Big Horn

River.[12] The good colonel, contrary to the popular American legend that he encountered "3-5,000 howling savages, was – like Crook – beaten by an number of Indians approximately equal to the strength of his own command. For the second time in a decade, the Lakota had successfully defended *Paha Sapa,* militarily defeating the U.S. Army.

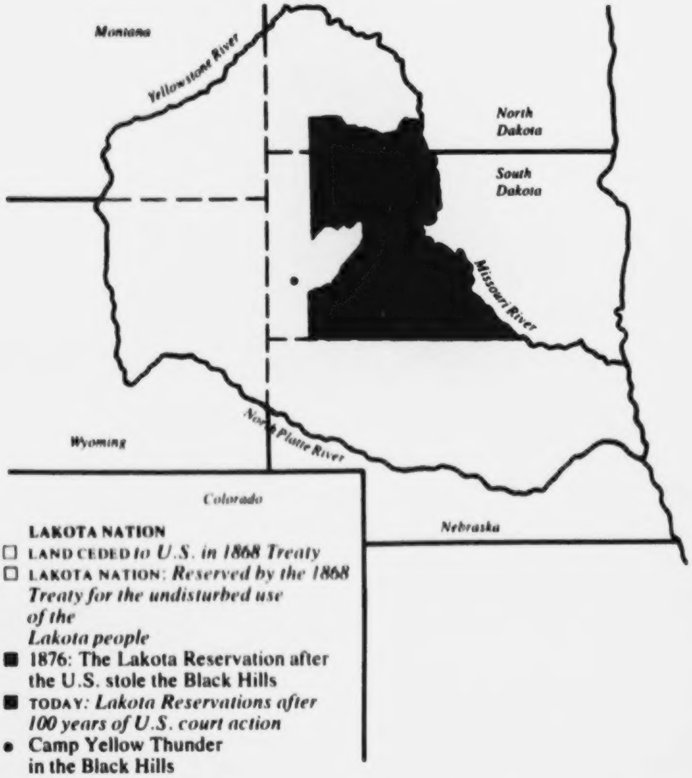
This time, however, the victory was to prove bitter. Vengefully licking its wounds after having been unable to best the Indians in open combat, the army imported Colonel Ranald McKenzie, a specialist in "total war." The new tactician spent the winter of 1876-77 tracking down individual Lakota and Cheyenne villages, using sheer numbers to overpower them and slaughtering women, children and old people as a matter of course.[13] By the spring of 1877, it was all over. In order to spare their non-combatants further butchery at the hands of the army, the Lakota leaders – aside from Sitting Bull and Gall, Hunkpapas who led their followers to sanctuary in Canada, not returning until the 1880s – surrendered. Having laid down his arms, Crazy Horse was assassinated by the military on September 5, and the era of Lakota armed struggle was brought to a close.[14]

The Theft of Paha Sapa

Undoubtedly as a result of the military advantage it eventually gained over the Lakotas during the Great Sioux War, the U.S. congress felt itself empowered to pass an act of February 28, 1877, stripping away the Unceded Indian Territory of the Great Sioux Nation as well as that portion of the Great Sioux Reservation itself containing the Black Hills (see Map I).[15] There is strong evidence that congress was well aware that the act was patently illegal insofar as it had enacted a slightly earlier measure suspending treaty-guaranteed allocations to provide Lakota subsistence rations until such time as the Indians "gave up their claim over the Black Hills."[16] In simplest terms, congress realized that the Lakota land cession it desired required the 75% expressed consent of all adult Lakota men in order to be valid, and it set out to starve the Indians into providing the necessary signatures. Even under these conditions, however, a commission headed by George Manypenny, and sent from Washington to obtain the Lakota consent stipulated by the 1868 treaty, was able to obtain the agreement of about 10% of all Lakota men. *Nonetheless,* congress passed its law "legally" expropriating the Hills.[17]

Over the following two decades, erosion of Lakota sovereignty and landbase were exacerbated by imposition of the Seven Major Crimes and General Allotment Acts (see Morris essay in this volume). The Lakota economy was prostrated, and the political process by which the nation had traditionally governed itself was completely subverted. By 1890, despair at such circum-

Map 1: Sioux Land Cessions


Montana
Yellowstone River
North Dakota
South Dakota
Missouri River
Wyoming
North Platte River
Colorado
Nebraska
LAKOTA NATION
☐ LAND CEDED *to U.S. in 1868 Treaty*
☐ LAKOTA NATION: *Reserved by the 1868 Treaty for the undisturbed use of the Lakota people*
■ 1876: The Lakota Reservation after the U.S. stole the Black Hills
■ TODAY: *Lakota Reservations after 100 years of U.S. court action*
● Camp Yellow Thunder in the Black Hills

stances had reached a level leading to the widespread adoption of the Ghost Dance religion, a phenomenon which provided the government an excuse by which to declare a state of military emergency, assassinate Sitting Bull, and then perpetrate the massacre of some 350 of his followers at Wounded Knee.[18] After that, Washington tended to view the Lakotas as being "thoroughly broken."

During the 1920s and '30s, Lakota sovereignty was even more thoroughly diminished through imposition of the Indian Citizenship and Indian Reorganization Acts (see Jaimes essay in this volume) and, as a consequence, by the 1950s congress was seriously considering the "termination" (*i.e.:* externally and unilaterally imposed dissolution) of the Lakota Nation altogether.[19] Although – unlike the Menominee, Klamath, and a number of other indigenous nations during the '50s – the Lakota were ultimately not terminated, the effects of their colonization were almost as devastating: by the contemporary era, their 1868 treaty territory had been reduced to a "complex" of reservation, geographically separating the bands from one another, comprising only some 10% of its original area (see Map I). Of the residue, the assertion of federal "trust responsibility" over Lakota property, a matter accommodated within the U.S. doctrine of exercising "plenary [full] power" over Indian affairs, placed more than two-thirds of the most productive acreage in the use of non-Indian ranchers and farmers.[30]

The consequences of this situation were readily apparent. By the federal government's own data during the 1970s, American Indians experienced far and away the lowest annual incomes of any identifiable "U.S." population group and, correspondingly, by far the shortest average life-spans.[31] Such circumstances have not changed appreciably by the late 1980s and, throughout both decades, the poorest single county in all of Indian Country – or the U.S. more generally – has been Shannon, on the Pine Ridge (Oglala Lakota) Reservation.[32]

The Legal Battle

The Lakota, of course, never accepted the circumstances of their colonization lying down. Realizing in the wake of Wounded Knee that any direct military response to U.S. transgressions would be at best self-defeating, they opted instead to utilize the colonizers' own legal codes – and international pretensions as a "humanitarian power, bound by the laws of civilized conduct"[33] – as a means of recovering what had been stolen from them.

The First Court Case

In 1920, a federal law was passed which "authorized" the Lakota to sue the government "under treaties, or agreements, or laws of Congress, on the misappropriation of any funds or lands of said tribe or band or bands thereof."[34] The law was hardly altruistic on the part of congress which, realizing that there had been "difficulties" with the manner in which Lakota "consent" had been obtained for the 1877 Black Hills land cession, saw this as a handy means to buy the Indians off and "quiet title" to the Hills once and for all. This was amply revealed in 1923, when the Lakota entered their suit with the U.S. Court of Claims, seeking return of their stolen land rather than the monetary compensation the government had anticipated would be at issue. Not knowing what to do in the face of this unexpected turn of events, the court simply stalled for 19 years, endlessly entertaining motions and counter-

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motions while professing to "study" the matter. Finally, in 1942, when it became absolutely clear the Lakota would not accept cash in lieu of land, the court dismissed the case, claiming the situation was a "moral issue" rather than a constitutional question over which it held jurisdiction.[25] In 1943, the U.S. Supreme Court refused to even review the claims court decision.[26]

The Claims Commission

The court room route appeared to be stalemated. But – on August 13, 1946 – the Indian Claims Commission Act[27] was passed by a congress anxious to put the best possible moral face on the government's past dealings with American Indians, given the recently announced U.S. intention of sitting in judgement of the Nazi leadership for having engaged in planning and engaging in "aggressive war" and other "crimes against humanity." Section II of the new act defined five bases upon which Indians might sue the government for lands lost, including:

- Claims in law or equity arising under the constitution, laws, and treaties of the United States.

- Claims which would result if the treaties, contracts and agreements between the claimant and the United States were revised on the ground of fraud, duress, unconscionable consideration, mutual or unilateral mistake, whether of law or of fact, or any other ground recognizable by the court of inquiry.[28]

Recognizing that such language might arguably cover the Black Hills taking, the Lakota refiled their original Court of Claims case with the Claims Commission in 1950. The commission, however, opted to view the case as having been "retired" by the 1942 Court of Claims dismissal (and subsequent Supreme Court denial of certiorari), and likewise dismissed it in 1954.[29] The Court of Claims upheld the commissions' decision on appeal from the Lakota during the same year.[30] Undeterred by this failure of "due process," the Lakota entered a second appeal, and in 1958:

> [T]he Indian Claims Commission [was] ordered by the Court of Claims to reopen the case on the grounds that the Sioux had previously been represented by inadequate counsel and as a consequence an inadequate record [had] been presented.[31]

In 1961, the U.S. Department of Justice attempted to have the Black Hills case simply set aside, entering a writ of *mandamus* seeking such "extraordinary relief" for the government; the Court of Claims rejected this tactic during the same year. The Claims Commission was thereby forced to actually consider the case. After a long hiatus, the commission announced that, having "studied the matter," it was reducing the scope of the issue to three elements:

- What land rights were acquired by the U.Sl *vis a vis* the Black Hills in 1877.
- What consideration had been given by the U.S. in exchange for these lands.
- If no consideration had been given, had *any* payment been made by the U.S.[32]

Proceeding form this basis, the commission entered a preliminary opinion in 1974 that congress had been exercising its "power of eminent domain" in 1877, and that it had therefore been "justified" in taking the Hills from the Lakota, although it was obligated to pay them "just compensation" for their loss, as provided under the fifth amendment to the U.S. Constitution.[33] The opinion denied any right of the Lakota to recover the land taken from them and they therefore objected to it quite strongly. The federal government also took strong exception to the direction things were taking, based upon its reluctance to pay any large sum of money as compensation for territory it had always enjoyed free of charge. Hence, in 1975 the Justice Department appealed to the Court of Claims, securing a *res judicata* prohibition against the Claims Commission "reaching the merits" of the proposed Lakota compensation package.[34] What this meant, in simplest terms, was that the commission was to be denied the prerogative of determining and awarding to the Lakota "the value of the land in question *at the time of taking*." This stipulation resulted in the commission arriving at an award of $17.5 million for the entire Black Hills, against which the government sought to "offset" $3,484 in rations issued to the Lakota in 1877.[35]

End Game Moves

The Lakota attempted to appeal this to the Supreme Court, but the high court of the U.S. again refused to consider the matter.[36] Meanwhile, arguing that acceptance of compensation would constitute a lean cession, and invoking 1868 treaty clause requiring 75% adult Lakota consent to legitimate any such cession, the Lakotas themselves conducted a referendum to determine whether the people were willing to relinquish title to *Paha Sapa*. The answer was a resounding "no." This unexpected turn of events presented the government with yet another dilemma in its continuing quest to legitimize its theft of Lakota territory; in order to make the best of an increasingly bad situation, congress passed a bill (in 1978) enabling the Court of Claims to "review" the nature and extent of Lakota compensation.[37] This the court did, "revising" the proposed award in 1979 to include 5% simple interest annually since 1877, a total of $122.5 million.[38]

The Justice Department again attempted to constrict the amount of compensation the government would be obliged to pay the Lakota by filing an appeal with the Supreme Court. The effort was unsuccessful insofar as in 1980 the high court upheld the Claims Court's award of interest.[39] The Lakota, however, remained entirely unsatisfied. Pointing to a 1979 poll of the reservations showing that the people were no more willing to accept $122.5 million than they had been $17.5 million in exchange for the Hills, and arguing that return of the land itself had always been the object of their suits, they went back to court on July 18, 1980, the Oglalas entered a claim naming the U.S. the state of North Dakota and a number of counties, towns and individuals in the U.S. District Court, seeking recovery of the land per se as well as $11 billion in damages. The case was dismissed by the court on September 12, supposedly because "the issue at hand [had] already been resolved."[40]

In 1981, the U.S. Eighth Circuit Court of Appeals affirmed the district court's dismissal and, In 1982, the Supreme Court once again declined to hear the resultant Lakota appeal.[41] These decisions opened the way in 1985 for the Court of Claims to finalize its award of monetary compensation, as the "exclusive available remedy" for the Black Hills land claim.[42] In sum, further Lakota recourse to U.S. courts had been extinguished by those courts. The game had always been rigged, and the legal strategy had (predictably) proven quite unsuccessful in terms of either achieving *Lakota* objectives or even holding the U.S. accountable to its own professed system of legality.

On the other hand, the legal route did mark solid achievements in other areas: pursuing it demonstrably kept alive a strong sense of hope, unity and fighting spirit among the Lakota which might otherwise have diminished over time. Further, the more than 60 years of litigation had forced a range of admissions from the federal government concerning the real nature of the Black Hills expropriations; the Supreme Court, for example, had termed the whole affair a "ripe and rank case of dishonorable dealings" and "a national disgrace" in its 1975 opinion. Such admissions went much further toward fostering broad public understanding of Lakota issues than a "one-sided" Indian recounting of the facts ever could have. Cumulatively, then, the Lakota legal strategy set the stage for both an ongoing struggle by Indians and for public acceptance of a *meaningful* solution to the Black Hills claim before the end of the century.

The Extralegal Battle

It is likely that the limited concession obtained by the Lakota from U.S. courts during the 1970s related to the emergence of strong support for the American Indian Movement (AIM) on Pine Ridge and Rosebud Reservations during the early part of the decade. At the outset, AIM's involvement on Pine Ridge concerned the provision of assistance to local traditional Oglalas attempting to block the illegal transfer of approximately one -eighth of the reservation (the so-called Sheep Mountain Gunnery Range) to the U.S. Park Service by the corrupt tribal administration of Richard Wilson.[43] AIM provided a marked stiffening of the Lakota resolve to pursue land rights by demonstrating a willingness to go toe-to-toe with federal forces on such matters, an attitude largely absent in Indian Country since 1890.

The virulence of the federal response to AIM's "criminal arrogance" in this regard led directly to the dramatic siege of Wounded Knee in 1973, a spectacle which riveted international attention on the Black Hills land issue for the first time. In turn, this scrutiny resulted in analysis and on increasingly comprehensive understanding of the vast economic interests underlying federal policy in the Black Hills region (see Map II), a process which steadily raised the level of criticism of the government and garnered further support to the Lakota position. Desperate to reassert its customary juridical control over questions of Indian land rights, the government engaged in what amounted to a counterinsurgency war against AIM and its traditional Pine Ridge supporters from 1973-76.[44]

By the latter year, however, it was a bit too late to effectively contain AIM's application of external pressure to the U.S. judicial system. In 1974, the Lakota elders had convened a treaty conference at the Standing Rock Reservation and charged Oglala Lakota AIM leader Russell Means with taking the *1868 Fort Laramie Treaty* "to the family of nations."[45] Means therefore formed "AIM's diplomatic arm," the International Indian Treaty Council (IITC), and set about achieving a presence within the United Nations, not only for the Lakota, but for all the indigenous nations of the Western Hemisphere. IITC accomplished this in 1977 – largely on the basis of the work of its first director, a Cherokee named Jimmie Durham – when delegations from 98 American Indians were allowed to make presentations before a subcommission of the U.N. Commission on Human Rights at the Palace of Nations in Geneva, Switzerland.

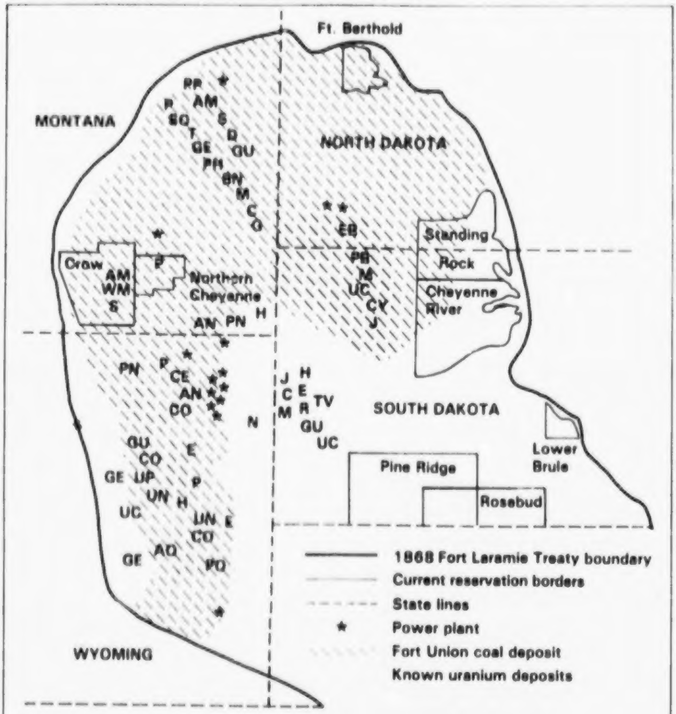
By 1979, the U.N. had reacted to what it had heard by establishing the Working Group on Indigenous Populations under the Commission on

AIM members establishing Yellow Thunder Camp in the Black Hills, some 13 miles west of Rapid City, S.D., April 1981. (Photo: *Oyate Wicaho*)

Human Rights, an entity dedicated to the formulation of international law concerning the rights and status of indigenous nations *vis a vis* nation-states which had subsumed them. The regularized series of hearings which were made integral to the working group procedure provided an international forum within which American Indians and other indigenous peoples could formally articulate the basis of their national rights, and the effects of governmental abridgement of these rights.

The upshot of this for the Lakota was, of course, that the U.S. could no longer conduct its Indian affairs in more-or less complete secrecy, as a purely "internal matter." Exposed to the light of concentrated international attention, the federal government was repeatedly embarrassed by the realities of its own Indian policies and court decisions. As a consequence, federal courts became somewhat more accommodating in the Black Hills case than they might otherwise have been. Still, when the Lakotas rejected monetary settlement of their land claim in 1979-80, AIM was instrumental in forging the popular slogan "The Black Hills Are Not For Sale." This was again coupled to direct extralegal action when Russell Means initiated an occupation in 1981 of an 880 acre site near Rapid City in the Black Hills (see Map I). This was couched in terms of being "the first step in the physical re-occupation of *Paha Sapa*." The AIM action again caused broad public attention to be focused upon the Lakota

Map II: U.S. coporate interests in the Greater Sioux Nation.


Ft. Berthold
MONTANA
NORTH DAKOTA
Standing Rock
Cheyenne River
Crow
Northern Cheyenne
SOUTH DAKOTA
Lower Brule
Pine Ridge
Rosebud
WYOMING
PP
AM
R
SO
S
T
D
GE
GU
PH
BN
M
C
O
ER
PR
M
UC
CY
J
F
AM
WM
S
AN
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E
R
TV
GU
UC
GU
CO
E
GE
UP
UN
P
H
UC
UN
E
CO
GE
AO
PO
1868 Fort Laramie Treaty boundary
Current reservation borders
State lines
★ Power plant
Fort Union coal deposit
Known uranium deposits

AM	Amax
AN	American Nuclear
AO	Ashland Oil
B	Burwest
BN	Burlington Northern
C	Chevron
CE	Commonwealth Edison
CO	Conoco
CY	Cyprus
D	Decker
E	Exxon
ER	Energy Res
F	Federal American
FO	Fremont Oil
G	Getty Oil
GE	General Electric
GU	Gulf Oil
H	Homestake Mining
J	Johns Manville
M	Mobil
N	Nuclear Dynamics
P	Peabody Coal
PD	Phelps Dodge
PH	Phillips Petroleum
PN	Pioneer Nuclear
PO	Powerco
PP	Pacific Power
PR	Power Resources
R	Rio Alcom
S	Shell Oil
SO	Sun Oil
T	Tenneco
TV	Tennessee Valley Authority
UC	Union Carbide
UN	United Nuclear
UP	United Pacific
W	West
WH	Westinghouse
WM	Westmoreland

Note: Corporate sites include projected power plant, mining, and waste disposal sites.

SOURCE: Prepared from information provided by the Black Hills Alliance for Amelia Irvin, "The Black Hills 'National Sacrifice Area': A Study in U.S. Internal Colonialism," *Minority Notes*, University of Colorado, vol. 1, nos. 3–4(Boulder, 1980).

land claim, and precipitated the potential of another major armed clash with federal forces; the latter possibility was averted at the last moment by a federal district court judge who – reflecting the government's concern not to become engaged in another "Wounded Knee-type confrontation" – issued an order enjoining the FBI and U.S. Marshal's Service from undertaking an assault upon the occupants of what was by then called Yellow Thunder Camp.[46]

Under these conditions, the government was actually placed in the position of having to sue the Indians in order to get them to leave what it claimed was federal property under control of the U.S. Forest Service.[47] AIM counter-sued on the basis that federal land-use policies in the Black Hills violated not only the 1868 treaty, but also Lakota spiritual freedom under the First Amendment to the U.S. Constitution and the American Indian Religious Freedom Act.[48] In 1986, the government was stunned when U.S. District Judge Robert O'Brien ruled in favor of AIM, finding that the Lakota had every right to the Yellow Thunder site, and that the U.S. had clearly discriminated against them by suggesting otherwise. The Yellow Thunder ruling is a potential landmark, bearing broad potential for application in other Indian land claims in the U.S., albeit still on appeal, and may be severely undercut or even negated by the Supreme Court's recent "GO-road Decision" (see Morris article in this volume).

Like the Lakota legal strategy, AIM's course of largely extralegal activity has proven insufficient in itself to resolve the Black Hills land claim. Nonetheless, it can be seen to have had a positive bearing on the evolution of litigation in the matter, and it has accomplished a great deal in terms of bringing public attention to and understanding of the real issues involved. In this sense, the legal and extralegal battles fought by the Lakotas for Paha Sapa may be viewed as having been – perhaps inadvertently – mutually reinforcing. And, together, these two efforts may have finally created the context in which this can occur.

The Bradley Bill

By the mid-1980s, things had reached such a pass in terms of the U.S. image vis a vis the Lakota that a liberal New Jersey senator, Bill Bradley, finally introduced legislation to congress by which he hoped to finally retire the Black Hills land claim in a manner the Lakotas might accept. The bill, S. 1453, would "re-convey" title to some 750,000 acres of the Black Hills currently held by the federal government, including subsurface (mineral) rights, to the Lakota. Further, it provides that certain spiritual sites in the Black Hills area would be re-titled to the Lakota and, along with some the 50,000 re-conveyed acres, be designated as a "Sioux Park"; the balance of the land given back to the Lakota would be designated as a "Sioux Forest."

Additionally, considerable water rights within the South Dakota portion of the 1868 treaty territory would be reassigned to the Lakota, and a full "Sioux National Council" (drawn from all the Lakota reservations) with increased jurisdiction within the whole 8.5 million acres of the 1868 "Great Sioux Reservation." Timbering and grazing permits, mineral leasing, etc., in the Black Hills would be transferred to Lakota control two years after passage of the bill (thus establishing a viable Lakota economic base for the first time in more than a century), and the $122.5 million (plus interest accrued since 1980) awarded by the Court of Claims would be disbursed as compensation for the Lakotas' historic loss of use of their land rather than as payment for the land itself. Finally, the draft bill posits that it would resolve the Black Hills claim *only,* and have no wider effect on "subsisting treaties." In other words, with a satisfactory settlement of the Hills issue in hand, the Lakotas would remain free to pursue resolution of their claims to the 1868 Unceded Indian Territory and their 1851 treaty territory.[illegible]

Although the Bradley Bill is obviously less than perfect – compensation remains very low, considering that the Homestake Mine *alone* has extracted more than $18 *billion* in gold from the Black Hills since 1877, and the U.S. and its citizens are left with considerable land and rights in the area to which they were never legally entitled – it represents a major potential breakthrough not only with regard to the Black Hills land claim, but to U.S./Indian relations far more generally. Although the full Lakota agenda is not met by the bill, it probably comes close enough that the bulk of the people would accept it. And that, more than anything, is a testament to their own perseverance in struggle, and in the face of astronomical odds.

Conclusion

In the end, the question becomes whether the Bradley Bill can be passed in its more-or-less present form. If so, the Lakota's long fight for their land, and for their integrity as a nation of people, will have been significantly advanced. More, a legislative precedent will have been set which could allow other peoples indigenous to what is now known as the United States to begin to truly reconstitute themselves, while the U.S. itself begins to reverse some of the worst aspects of tis ugly history of colonization and genocide against American Indians. In the alternative, if the bill is gutted or rejected outright, and thus fails to resolve what by any measure is the best known of all Indian land claims in the U.S., it will be a clear sign that the U.S. remains committed to its traditional policy of expropriating Indian assets by whatever means are necessary and available to it, and to destroy indigenous societies as an incidental cost of "doing business." In that event, the Lakota will have no real

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option but to continue their desperate struggle for survival, an indication that the future may prove grimmer that the past.

End Notes

1 The full text of the *Treaty of Fort Laramie with the Sioux, Etc., 1851* (11 *Stat.* 749), may be found in Kappler, Charles J., *Indian Treaties, 1778-1883*, Interland Publishing Co., New York, 1973, pp. 594-96.

2 See Brown, Dee, *Fort Phil Kearny: An American Saga*, University of Nebraska Press, Lincoln, 1971, pp. 184-90.

3 The full text of the *1868 Fort Laramie Treaty* (15 *Stat.* 635) may be found in Kappler, *op. cit.* Lakota territorialty is spelled out under Articles 2 and 16.

4 *Ibid.*, Article 17.

5 *Ibid.*, Article 12.

6 See Jackson, Donald, *Custers Gold: The United States Cavalry Expedition of 1874*, University of Nebraska Press, Lincoln, 1966, p.8.

7 *Ibid.*

8 This was the "Allison Commission" of 1875.

9 See Pommershein, Frank, "The Black Hills Case: On the Cusp of History," *Wicazo Sa Review*, Vol IV, No. 1, Spring 1988, p. 19.

10 See Andrist, Ralph, *The Long Death: The Last Days of the Plains Indians*, Collier Books, New York, 1964, pp. 276-292.

11 See Trebbel, John, *Compact History of the Indian Wars*, Tower Books, New York, 1966, p. 277.

12 See Brown, Dee, *Bury My Heart At Wounded Knee: An Indian History of the American West*, Holt, Rinehart and Winston Publishers, New York, 1970, pp. 301-10.

13 Andrist, *op. cit.*, p. 297.

14 Brown (1970), *op. cit.*, p. 312.

15 19 *Stat.* 254 (1877).

16 Act of August 15, 1876, Ch. 289, 19 *Stat.* 176,192; the matter is well-covered in

"1986 Black Hills Hearing on S. 1453, Introduction," (prepared by the office of Sen. Daniel Inouye), reproduced in *Wicazo Sa Review, op. cit.*, at p. 10.

17 *Ibid.*

18 See Andrist, *op. cit.*, pp. 351-52.

19 This would have occurred under House Concurrant Resolution 108 (67 *Stat.* B132); see Deloria, Vine Jr., and Clifford M. Lytle, *American Indians, american Justice*, University of Texas Press, Austin, 1983, pp. 17-18.

20 This occurred as a result of an 1891 amendment (26 *Stat.* 794) to the General Allotment Act (25 U.S.C.A. § 331) providing that the U.S. Secretary of Interior ("or his delegate," meaning the BIA) might lease out the land of any Indian who, in his opinion, "by reason of age or other disability" could not "personally and with benefit to himself occupy or improve his allotment or any part thereof." As Deloria and Lytle, *op. cit.*, observe on p. 10: "In effect this amendment gave the secretary of interior almost dictatorial powers over the use of allotments since, if the local agent disagreed with the use to which [reservation] lands were being put, he could intervene and lease the lands to whomsoever he pleased." Thus, by the 1970s, the bulk of the useful land on many reservations in the U.S. – such as those of the Lakota – had been placed in the use of non-Indian individuals or business enterprises, and at *very* low rates.

21 U.S. Department of Health, Education and Welfare, *Statistical Portrait of the American Indian*, U.S. Government Printing Office, Washington, D.C., 1976.

22 U.S. Department of Interior, Indian Health Service, *American Indians: A Statistical Profile*, U.S. Government Printing Office, Washington, D.C., 1988.

23 The language accrues from one of President Woodrow Wilson's many speeches on the League of Nations in the immediate aftermath of World War I.

24 41 *Stat.* 738 (1920).

25 *Sioux Tribe v. United States*, 97 Ct. Cl. 613 (1943); this was a thoroughly spurious argument on the part of the court insofar as treaties are covered quite well under Articles I and VI of the U.S. Constitution.

26 *Sioux Tribe v. United States*, 318 U.S. 789 (1943).

27 Ch. 959, 60 *Stat.* 1049 (1946).

28 60 *Stat.* 1049, 23 U.S.C. § 70 *et. seq.* (1983).

29 *Sioux Tribe v. United States,* 2 Ind. Cl. Comm. (1956).

30 *Sioux Tribe v. United States,* 146 F. Supp. 229 (1946).

31 Inouye, *op. cit.,* pp. 11-12.

32 *United States v. Sioux Nation,* 448 U.S. 371, 385 (1968).

33 *Sioux Nation v. United States,* 33 Ind. Cl. Comm. 151 (1974); the opinion was/is a legal absurdity insofar as congress holds *no* such "power of eminent domain" over the territorality of *any* other nation.

34 *United States v. Sioux Nation,* 207 Ct. Cl. 234, 518 F. 2d. 1293 (1975).

35 Inouye, *op. cit.,* p. 12.

36 423 U.S. 1016 (1975).

37 P.L. 95-243, 92 *Stat.* 153 (1978).

38 *Sioux Nation v. United States,* 220 Ct. Cl. 442, 601 F. 2d. 1157 (1975).

39 448 U.S. 371 (1980).

40 *Oglala Sioux v. United States* (Cir. No. 85-062) (W.D. N.D. 1980), September 22, 1980.

41 455 U.S. 907 (1982).

42 *Sioux Tribe v. United States,* 7 Cl. Ct. 80 (1985).

43 See Matthiessen, Peter, *In the Spirit of Crazy Horse,* Viking Press, New York, 1984, pp. 425-28.

44 See Churchill, Ward, and Jim Vander Wall, *Agents of Repression: The FBI's Secret Wars Against the Black Panther Party and American Indian Movement,* South End Press, Boston, 1988.

45 This is well-covered in Weyler, Rex, *Blood of the Land: The Government and Corporate War Against the American Indian Movement,* Vintage Books, New York, 1984.

46 *Ibid.*

47 *United States v. Means, et. al.,* Docket Bo. Civ. 81-5131 (D.S.D., December 9, 1985).

48 P.L. 95-431, 92 *Stat*. 153 (1978).

49 The full text of S. 1453 may be found at p. 3 of *Wicazo Sa Review, op. cit*.

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The White Earth Land Struggle

by Winona LaDuke

The White Earth Indian Reservation in northern Minnesota is homeland to the Anishinabe people (usually called "Chippewa" by non-Indians in the U.S., "Ojibway" in Canada) of the Mississippi, Pillager and Pembina Bands. While an 1867 treaty with the United States reserved these lands for the exclusive use and occupancy of Mississippi Band members — and, under separate agreements, portions of the Pembina and Pillager Bands also came to live there — the Mississippi Band is today outnumbered more than two-to-one by non-Indians living within the reservation borders. More, illegal non-Indian land takings and general economic exploitation have forced approximately 80% of the Anishinabe off their reservation at White Earth, into urban ghettos throughout the U.S.

One hundred and fifty years ago, the recognized landbase of the Mississippi Band of the Anishinabe Nation was about 20 million acres. Today, the Band controls less than 60,000 acres. Consequently, a people with rightful ownership of vast natural resources are forced to live in poverty within their own homeland. Many others, for whom there is no longer room on what's left of the reservation, have been made into outright refugees. This is the story, not only of how all this came to be, but what the Anishinabe people are presently doing about it.

The Economic Basis of Anishinabe Treaties

Beginning at Fort MacIntosh in 1785, and ending in 1923 at Georgian Bay, the U.S. and Canadian governments (or the Crown of England, during the early period) entered into more than 40 treaties with the Anishinabe. These treaties were an interpretation of Anishinabe legal rights in relationship to the U.S., England and Canada. They were also the basis for some of the largest land transactions in world history.

In terms of the U.S. concept of property rights, the federal government has never claimed to hold or control Anishinabe land by "right of conquest." Rather, it claims to have legally acquired these and other American Indian lands by agreement — usually manifested in the form of treaties — with the original occupants/owners. This is the mechanism — represented in 371 treaty instruments and some 720 related land seizures between 1784 and 1894 — through which the U.S. allegedly "bought" more than 95% of its present continental territorality for approximately $800 million. Land has always been the source of wealth in the United States, and, it follows, of power. This is why the issue of land claims continues to be the central point of contention between the U.S. and various American Indian nations, and why the federal government now claims not only to own all but about 3% of its aggregate landmass outright, but to exercise "trust responsibility" and "plenary power" over all residual Indian land holdings as well.

The treaties between the U.S. and the Anishinabe were negotiated, like the others, for economic reasons. In general, this means access by the U.S. to the western Great Lakes Region, with its tremendous resources of iron ore, copper and timber. These resources became a primary component in the "development" of American industrial capitalism, a matter which reciprocally engendered the "underdevelopment" of traditional Anishinabe economic self-sufficiency and standard-of-living.

There was a 2,500 pound rock of naturally-occurring pure copper called the Ontonogan Boulder which rested on the south shore of Lake Superior, on what is now known as the Kewanee Peninsula. By 1800, representatives of both the Queen of England and of the U.S. had seen it and within a few years both had, without success, attempted to remove it. By the mid-1820s, the federal government had decided to do a comprehensive inventory of the "mineral assets" of the Lake Superior area, and a study of Indian title to the lands therein. Within a very short period, four treaties were signed between the U.S. and the Anishinabe Nation, each providing for access to and mining in Anishinabe territory. These treaties covered both the Kewanee Peninsula and the Mesabe ("Sleeping Giant") iron ore belt in northern Minnesota. By mid-century more than 100 copper companies had been incorporated in the Minnesota, Wisconsin and Michigan Territories; as early as 1849, 100% of all U.S. copper production — the world's leader — came from the Kewanee Peninsula, "ceded" by the Anishinabe in the treaty of 1842.

Treaty negotiations and land cessions, as always, meant different things to the parties involved. The Anishinabe have always had a clear understanding of their relationship to the land, based upon a spiritually perceived responsibility to serve as caretakers for the Creator. In the Anishinabe view, "ownership," within the Euroamerican meaning of the term, is an absolute impossibility: ownership of land cannot be vested in people because the land itself is alive and people are simply a sub-part of this living organism. Therefore, the Anishinabe have always asserted that they agreed only to share their lands with (as opposed to selling their lands to) other humans, never relinquishing their own hunting, fishing, and other economic, spiritual or political rights within the whole of their territories.

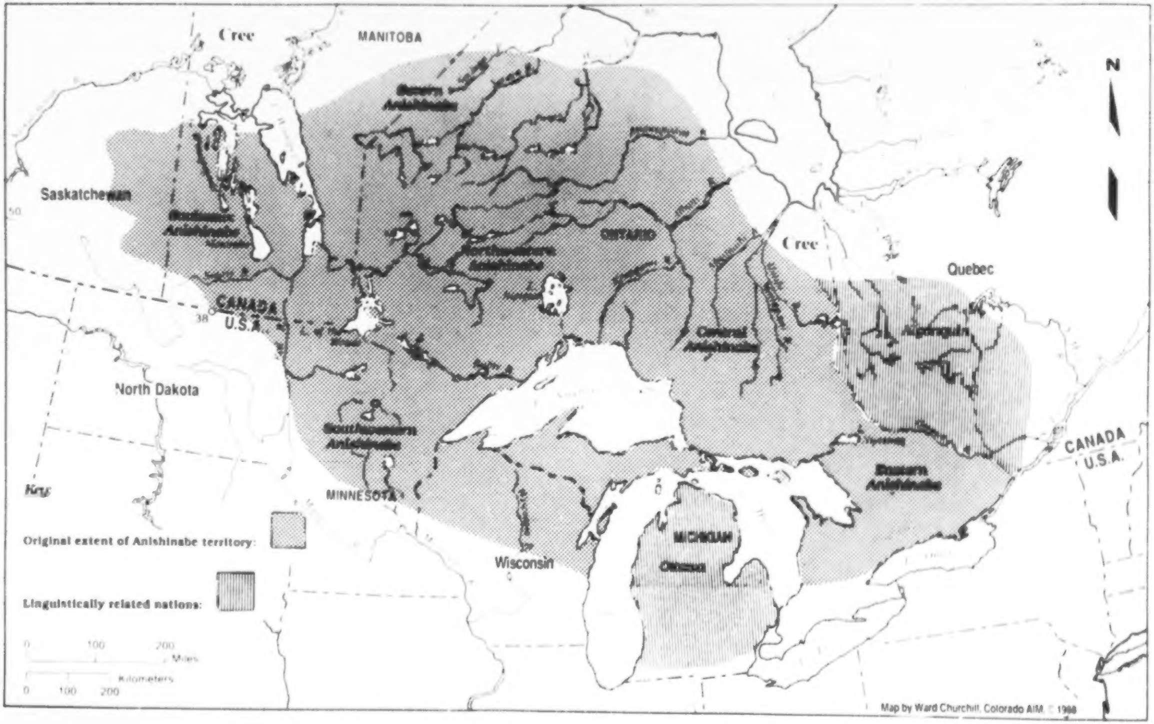
For Euroamericans, of course, things were very different. Following their own Christian precept of "man's obligation" to exercise "dominion over nature," they set out to extend formal title over every acre they could acquire.

Treaty chiefs of the Pillager Band *circa* 1865 (Photo: *Smithsonian Institution*)

Further, in keeping with their basic economic motivations, they prepared treaty documents which supposedly conveyed such title at the cheapest possible rate; the final payments to the Anishinabe for U.S. use, ownership — or *however* one defines it — of Anishinabe land averaged only *8¢ per acre*. This should be contrasted, not only with the wealth in copper streaming from the Kewanee Peninsula, but with the fact that, beginning in 1890 and continuing for nearly 50 years, fully 75% of all U.S. iron ore production accrued from the Mesabe ore deposits. Almost every major, contemporary U.S. (or, to be more accurate, U.S.-based transnational) mining corporation sprang directly from the riches obtained from Anishinabe lands during the century running from 1850 to 1950.

By the point of the 1854 treaty between the U.S. and the Anishinabe, the government had begun to literally circumscribe Anishinabe territorality, creating the first reservations for these American Indians at Grand Portage and Fond du Lac while decreeing they had "forfeited their rights" within other areas of their homeland. Eventually, once its control of Anishinabe territory had become fully consolidated, the federal government admitted what had long-since become obvious to the world community, that it had failed (spectacularly) to live up to its treaty commitments and responsibilities *vis a vis* the various American Indian nations from which it had accumulated

Traditional Anishinabe Territory


Cree
MANITOBA
Severn Anishinabe
Saskatchewan
50
CANADA
U.S.A.
38
ONTARIO
Cree
Quebec
Central Anishinabe
Algonquin
North Dakota
Southwestern Anishinabe
MINNESOTA
Eastern Anishinabe
CANADA
U.S.A.
MICHIGAN
Ottawa
Wisconsin
N
Key
Original extent of Anishinabe territory:
Linguistically related nations:
0 100 200 Miles
0 100 200 Kilometers
Map by Ward Churchill, Colorado AIM, © 1988

its own claimed territorality. Given the U.S. penchant for comporting itself as a veritable paragon of humane legalism and as being the antithesis of a colonial power, it was duly announced that an official apparatus would be established through which Indians could receive "justice" for the wrongs done them by past "mistakes" in federal policies.

The Indian Claims Commission

What was thus established in 1946 was called the "Indian Claims Commission," a special federally chartered entity designed to absorb American Indian law suits concerning land claims which had already been presented to the U.S. Court of Claims, and to accept any further such suits. The Claims Commission was actually charged with going out and finding as many potential Indian land claims as possible, and in some ways to assist the Indian plaintiffs at issue in bringing their case "to court." The *only* forum to which an Indian land claim could be brought was to the Commission, and the Commission was empowered to resolve any situation in which the Indian claim was found to be justified *only* through an "appropriate" award of cash "compensation" to the Indians.

In other words, even when Indians could show in the clearest possible terms that their land had been illegally taken by the federal government, they could not recover the stolen land itself. Instead, they were to accept a monetary "settlement" for "damages." And the amount of the settlement awarded was to be set by the Claims Commission, that is, the legal representatives of the very federal government which stood guilty of having acted as a thief in the first place. As American Indian legal scholar Vine Deloria, Jr., has put it, "The procedure neatly reversed the principles embodied in several centuries of English Common Law, the very principles upon which U.S. law is supposedly based," and:

> What we have here is a situation in which, let's say, I steal your car; let's make it a brand new $60,000 Mercedes Benz. I'm apprehended a few blocks down the street by a traffic cop, and taken to jail. Your car is impounded by the police. The next day, I'm arraigned and the judge asks whether or not I'm guilty of stealing your car. I agree that I am, and so the judge says I have to pay you for the damages I've caused you. Okay, so far, so good. But now the judge tells me that I myself am to determine how much I am to pay you as compensation, and the moment I make my payment the title to your car "passes" to me. I will then own it legally, and it will therefore be released to me rather than to you. At this point, all that's left is for me to say that the whole thing ought to be "settled" for about $5, and

> pay up. Now, at the end of this little court proceeding, I'm no longer a criminal. Instead, I'm an upstanding citizen holding legal title to a brand new Mercedes. And you, the victim of my theft? Well, you've got my $5 bill, and the whole issue is supposed to be "resolved." If you don't mind my saying so — and I think you'll agree — this is a *very* strange concept of law we're dealing with here. But this is exactly the sort of "logic" which guides Indian Law in the United States, so maybe you can see why Indians are a little upset and unhappy with the judicial process in this country.

Hence, the outcome of each Claims Commission case "won" by Indians resulted not in their recovery of property demonstrably stolen from them, but in the federal government's securing of both "quiet title" to the land it had illegally taken and a rationalization by which it could posture and pretend to have conducted itself nobly. As concerns the "Chippewas of Minnesota" — as the Anishinabe of that area were described in treaties with the U.S. — this principle pertained to five cases filed with the U.S. Court of Claims in 1927, as well as another 50 suits referred to the Claims Commission by 1946. The net result was an agreement by the government to pay an additional 44¢ per acre for Minnesota Anishinabe land it had illegally taken; this was supposedly the "fair market value" of these lands *at the time they were stolen,* rather than at the time the compensation awards were made. From the total award, the government then deducted "off-sets," such as the costs of the treaty negotiations upon which *it* (not the Anishinabe Nation) based its claim to land title. In the end, the Anishinabe of Minnesota received a total of just over $2 million for "clear U.S. title" to the great bulk of their homeland, with a hefty chunk of even these monies going to pay the "fees" of the attorneys (often federally-appointed) who had "represented Chippewa interests" before the Claims Commission.

The Theft of White Earth

When the White Earth Reservation was first established, it afforded a landbase and ecological mix sufficient to support the lifeways of the Mississippis, Pembinas and Pillagers who came to live on it. They brought with them a pre-established and well-functioning socio-political and economic system. Hunting, wild rice and maple sugar camps, as well as other seasonal or temporary settlements alternated with more stable (agricultural) village life, a structure enhanced by the trade generated through trapping and a moderate influx of cash and commodity annuities paid by the U.S. as reciprocation for land cessions. In these early reservation days, the people of White Earth prospered and retained much of the comfortable standard of living enjoyed during the pre-reservation period.

Elder Fred Weaver (Windigoowub), a leader in the Anishinabe struggle to reclaim the White Earth Reservation *circa* 1987. (Photo: *Winona LaDuke*)

Within 20 years, however, the federal government began a campaign to eradicate the reservation and "assimilate" the residents of White Earth into the "broader American society." At a national level, the legislation through which this policy was pursued was called the General Allotment Act (see the Morris and Jaimes essays in this volume); in specific relation to White Earth, it was implemented through what was called the Nelson Act. In simplest terms, the purpose of these laws was to bring about dissolution of the communally-held Indian landbase by imposing individually titled parcels of approximately 160 acres each (80 acres at White Earth, under the terms of the Nelson Act) upon each "federally recognized" Native American. Not only did such a system of individuated property ownership have catastrophic implications in terms of undercutting indigenous concepts of collective (national-social) identity and the relationship of humans to the land and environment, it provided a rationalizing mechanism through which non-Indians might acquire "legal title" to vast tracts of treaty-reserved Indian territory.

The method employed in this regard was as simple as it was illegal under treaty provisions: at such time as each recognized Indian had received his or her allotted parcel, all remaining reservation land was declared "surplus" and either directly impounded by the government or parceled out as "homesteads" to individual non-Indians. Further, once the non-Indians had become entrenched upon former reservation lands, it became a relatively easy matter for them to con or coerce transfer title of individual Indian allotments to themselves. By 1920, some 80% of the White Earth Reservation was lost through this process. As Fred Weaver (Windigoowub), an elder living in Pine Point village on White Earth, recently put it:

> We used to have a lot of them lands here around Pine Point. We had eight eighties (80 acre allotments). Them land speculators came and tricked us out of them lands. My mother had an eighty on Many Point Lake. Now, they tricked her out of that for $50. Now, that's a Boy Scout camp. And my father-in-law, Jim Jugg, he hand land too. And now the county says it owns them lands. All of 'em. We lived poor a long time, and we should've had all of them lands...

Under provision of both the General Allotment and Nelson Acts, individual Indian allotments were supposedly to have been safeguarded by the federal government through the self-proclaimed trust responsibility it exercised (and exercises) of Indian assets and affairs. Indian allotments were formally designated as federal trust lands and consequently, by law, were inalienable for purposes of private sale. Yet, a whole series of state and federal statutes were passed during the early 20th century which contradicted this principle, establishing an utterly racist basis by which precisely such alienation could occur. One such law, for example, taking note of the fact that "mixed blood Indians" were deemed "legally competent" by the U.S. congress – as opposed to "full bloods," who were legally defined as being "incompetent" – decreed that sales of allotments by the former would be allowed; as a result, the names of more than 700 people who had previously been carried on the White Earth rolls as full bloods suddenly (and mysteriously) appeared on a "revised" roll as being mixed bloods. Simultaneously, a bevy of land sharks materialized on White Earth, offering the 700 a range of short-term, high interest mortgage notes with which to engage in "improvements" on their properties. The bulk of these mortgage instruments were "sealed" with the thumbprint of the Indian concerned (thus pointing firmly to the conclusion that the Indians were illiterate, a matter leading to the probability that they were completely unaware of the terms of the contracts into which they had been persuaded to enter); when the Indians were unable to make the specified mortgage payments, their notes were foreclosed and their allotments "legally" expropriated.

Another statutory ploy which was utilized was for the state of Minnesota to be allowed to extend its taxation prerogatives over Indian allotments – as federal trust parcels, these should have been entirely exempt from such taxation – and for the state to foreclose on the basis of non-payment of such taxes by poverty-stricken Anishinabe. The state expropriated acreage was then auctioned off to the same speculative interests which were extending the shoddy mortgages. All told, about 250,000 acres of 20% of White Earth remaining in Anishinabe hands after allotment was stripped away through such patently illegitimate expedients as these.

This booming trade in Anishinabe land led quickly to the emergence of a number of "border towns" along the reservation boundary, non-Indian communities which (by their own proud admission) owed their very existence to what they judged could be gotten "from the skin of the redskin." In 1906, a feature story in the *Minneapolis Tribune* was titled "Fleecing the Indians," and observed that the development of northern Minnesota was predicated in a "bitter competitive war to get every inch of Indian land, if possible." By the mid-teens, the Anishinabe living at White Earth had been thoroughly pauperized as a result of the process, a factor which undoubtedly laid the foundation for the epidemics of tuberculosis and trachoma which broke out on the reservation during that decade. Maggie Hanks, an elder who lived all her life in or near White Earth village, summed the matter up succinctly, shortly before her death in 1985:

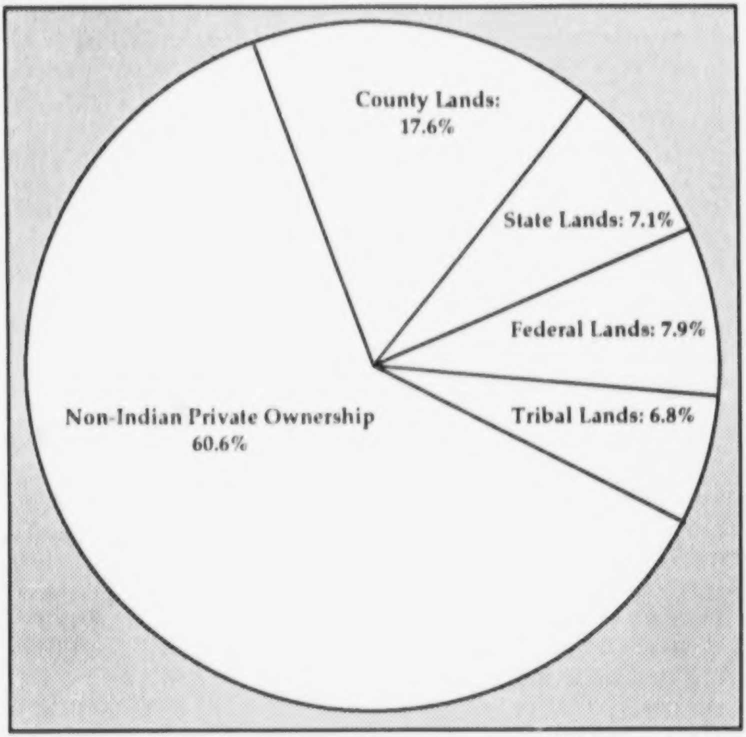
> Yah, a lot of land was stolen by them people that knew how to do business...That's true! I still got my mind real good, [and I know] we wouldn't be so dog-gone poor as we are [if we still had our land]. But we're about the poorest people who ever lived, since we lost it...

As the 1920s rolled around, the U.S. Bureau of Indian Affairs (BIA) agent assigned to the White Earth Agency began referring to the reservation itself as "a thing of the past," and created a program of actively encouraging the Anishinabe to out-migrate to more southerly, urban areas. By 1930, almost half of the Indians enrolled at White Earth had been displaced from the reservation, a matter which correlates well with a government finding, reached in 1934, that only one-in-twelve White Earth residents still retained their allotment. In 1938, these figures had changed to one-in-twenty and, by the present era, it is estimated that 94% of the total reservation area remaining after allotment is in non-Indian hands.

Abortion of the 2415 Process

In 1966, as a result of mounting criticism of its default in protecting Indian

Who Owns White Earth Reservation?



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rights, the Congress of the United States suddenly "realized" that the bulk of all nominally Indian lands was actually in the hands of non-Indians. In a further "revelation," congress also found that upwards of half of the contemporary reservation population in the U.S. is composed of non-Indians who "appear to" control the reservation economies, leaving Indians destitute. Shortly thereafter, congress "discovered" that, although Indians remained (hypothetically) the most richly endowed single group in North America in terms of per capita land and resource holdings, the in actuality experienced far and away the lowest per capita income of any identifiable population group, the shortest average lifespan (44.5 years among men, 46 among women), a near-total incidence of malnutrition, the highest rates of death from plague disease and exposure, as well as the greatest rates of infant mortality and teenage suicide. The standard-of-living exhibited by these "richest of all Ameri-

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cans" were found to be "virtually Third World in nature," and the correlation between this situation and the loss of Indian control over Indian land was too obvious to be plausibly denied.

Under a certain degree of public scrutiny, congress responded by passing CFR25, Section 2415 of which mandated a federal investigation into the nature of land transactions on 40 reservations during the preceding approximately 60 year period. It took until 1978 for this "2415 Investigation" process to reach White Earth, and until 1981 for federal investigators to really begin to interview elders on the reservation, many of whom had been among the original allottees and who therefore held first-hand recollections of how individual land parcels had been stolen. Meanwhile, other researchers were exploring county records, attempting to follow the routes by which various allotment deeds had been transferred over the years. This latter group quickly found that their task was greatly complicated by the fact that the BIA had suspended much of its record-keeping with regard to property transfers, and the probating of Indian estates, for nearly 70 years; the Bureau was forced to "explain" that this was because it felt the state of Minnesota held civil jurisdiction over such federal trust property, a position holding no basis at all in federal law.

In 1982, with less than 30% of its examination complete, the 2415 investigating team published a preliminary list of several hundred land parcels on White Earth which it felt to be currently deeded under "questionable title" (that is, to have been transferred under conditions of fraud or other illegality). The title to such parcels was consequently "clouded," and thus could not be legally sold or otherwise transferred again until appropriate litigation occurred on a case-by-case basis. This, in turn, meant that such property could not be used as collateral to secure mortgages or other sorts of loans until such time as title was officially "cleared" or "quieted" in federal court, a procedure which could take years. In essence, each parcel which appeared on the investigators' list might rightly be described as having been rendered useless to its present "owners."

Non-Indian response was swift. Within a few months, the 2415 Investigation at White Earth was suspended "indefinitely" at the specific request of Congressman Arlan Strangeland, representing the district in which the reservation falls. Responding to pressures imposed by a variety of propertied lobby groups, Strangeland then authored a bill, submitted to the U.S. House of Representatives in early 1983, calling for congress to permanently abort the investigative and judicial processes by unilaterally extinguishing Indian title on White Earth *vis a vis* any land parcel now deeded to a non-Indian. According to the congressman, the Indians could be "adequately compensated" in cash for "any property which might have at some historical point been wrongfully taken from them." This, in his view, would hold true whether or not said Indians desired such compensation; no mention was made of the fact that non-Indians might as easily be compensated for any loss they might incur in the process of a governmental restoration of wrongfully taken Anishinabe lands.

Strangeland couched his proposed legislation in terms of being a way to "act in fairness" to those non-Indians who had "purchased property in good faith within the reservation boundaries" and to "avoid conflict" between Indians and non-Indians within his northern Minnesota congressional district. The "fundamental issue," according to the congressman, was whether "citizens" (meaning non-Indians) might be "evicted from their homes" (as the Anishinabe had been) in a "misbegotten" congressional effort to render "after-the-fact justice" to American Indians. By utilizing such "humanitarian" rhetoric and playing upon the fundamentally anti-Indian sentiments of the congressional *status quo*, Strangeland had attracted considerable support to his "remedy" by 1984. The 2415 process, which initially seemed to offer some basis for solution of the problems of Anishinabe people at White Earth, appears to have been totally abandoned as a result.

The Birth of Anishinabe Akeeng

As all this was going on, a new reservation-based Indian group – Anishinabe Akeeng (People's Land Organization) – was created on White Earth, through which to pursue land recovery, with or without federal cooperation. There was, of course, always an indigenous movement to block, or at least resist the expropriation of reserved territory, and to recover that which had been illegally taken. This was brought out quite clearly in an 1874 observation of Mississippi Band leader, Wabunoquod:

> Land cessions always mean the loss of political power. Cash payments for land mean little if a tribe has no political power and, consequently, no control over the money paid for the land. Land cessions lead to poverty. Poverty always leads to further removal from the land. Any reservation of the land has to include the...resources of the land...When I heard that our pine had been sold without consulting us, I cried and prayed that it might not be wrested from us without our consent...

The record reveals that during the allotment period, at the turn of the century, the Anishinabe leadership collectively opposed imposition of federal land disbursement policies, and persistently attempted to haul those who speculated on the results of the Nelson Act into court. That justice in such matters was not forthcoming from the federal judiciary in 1910 in no way reflects upon the fact that the Anishinabe all along attempted to secure it.

In 1982, as the 2415 investigation was reaching its standstill, Anishinabe Akeeng set out to establish an autonomous Indian position on the questions of land title and recovery. Using the investigation's tentative list of clouded titles as a point of departure, the group began conducting its own interviews with White Earth elders in order to round out a detailed picture of what had happened to the landbase from a distinctly Anishinabe point of view, putting together a preliminary oral history of the land expropriations for utilization in a community education project. This was supplemented with video tapes of various attorneys discussing the people's rights under existing law, and mimeographed analyses of currently proposed legislation designed to extinguish Indian land titles once-and-for-all. In meeting after meeting, the people of White Earth reiterated to the members of Anishinabe Akeeng that their land was not for sale, and had never been; in essence, their near-unanimous position was that the thieves should be compelled to return what had been stolen.

In response, the federal government accelerated its extension of cash offers to induce the tribal council to "settle" the land issue on the reservation. Arlan Strangeland himself proposed the payment of $3 million as compensation for the approximately 800,000 acres most immediately contested. Strangeland then attempted to convince the council that his would be the *only* "serious offer," although he immediately upped the ante to $5 million when 400 White Earth enrollees showed up at a council meeting to demand that the tribal government reject his initial offer outright. The $5 million package was also rejected, almost as rapidly as it was submitted. By 1985, the federal government was suggesting that $20 million would constitute "an appropriate compensation" for the land at White Earth, but were getting no further in gaining Anishinabe acceptance of the idea than they had at the onset.

The reason for this was, in no small part, the fact that as each federal offer was tendered, Anishinabe Akeeng quickly analyzed it and then launched a public education campaign – composed of meetings, public fora, etc. – on a reservation-wide basis to acquaint the people with the specifics of what was being proposed. Aware of the details of what was to be done to them, most Anishinabe people were willing to articulate and act upon their resistance to it. From this basis, the organization also assisted in sending a series of delegations to Washington, D.C., in a sustained effort to educate members of the U.S. Congress on the history of the White Earth land claim, the Anishinabe relationship to the land, and thus the basis for what was apparently seen by many congresspeople as the Indians' "obstinate" resistance to "reasonable solutions."

"Settlement" and Resistance

Despite such clear opposition from the grassroots Anishinabe of the reservation, the "White Earth Settlement Act" was signed into law in March of 1986. The arrogance of this federal action stunned the community, which subsequently announced that resistance would not only continue, but *increase.* The reasons for this were/are framed as follows:

1) Clearing title to lands already illegally taken within the White Earth Reservation was/is seen as a preliminary step toward complete dissolution ("termination") of the reservation. This, in turn, was/is seen as an extremely dangerous contemporary precedent which might well be used by the government against other reservations and other peoples.

2) The basic unconstitutionality by which the White Earth land expropriations had occurred, if we were to now sanction them by conveying our agreement that "what's done is done," would set an extremely dangerous precedent, not just for Indians, but for *all* people in the U.S. This concerns the legal procedures supposedly guaranteeing people's rights with regard to inheritance, probate, etc. The way the White Earth land expropriations have been handled should be of serious concern to non-Indian ranchers and family farmers, albeit a small handful of them stand to gain (however temporarily) from the Settlement Act. Indians are by no means the only ones the government and major corporate interests stand to dispossess and disenfranchise in the ongoing process of nation-state consolidation.

3) Even if the Anishinabe as a whole were willing to forego their principles and their land rights (which they aren't), the so-called compensation package attending the Settlement Act would still be a slap in the face. As has been noted, the uncompensated taking of Anishinabe land has all along resulted in the reduction of the people to dire poverty and an ensuing raft of negative social and physical consequences. Conversely, it is documentably true that illegal possession of Anishinabe land during the 20th century has been utilized as the basis for enrichment of the local (and state, regional and national) non-Indian economy. Literally, their wealth and

> comfort have been translated into our poverty and pain. For the government to now suggest that we might be adequately compensated for this by an award of the "cash value" of our land "at the time of taking" – *circa* 1910 – with no reference to what we have lost and experienced in the interim, is worse than a travesty. It plainly implies that non-Indians are entitled to their "place" (as colonizers) while we must be content with "ours" (as the colonized).

Integral to the Anishinabe decision to continue to resist was the idea that this struggle should be waged largely within the U.S. legal system, seeking to establish elements of law which would serve not only to satisfactorily resolve our own immediate problems, but which might serve to protect other Indians and even non-Indians from similar situations in the future. By June of 1986, we had assembled a national legal team – including Wisconsin attorney Kurt Blue Dog and the New York-based Center for Constitutional Rights – to pursue the overturning of the White Earth Land Settlement Act, and to bring about the return of our land. The first step in this direction was taken in October of 1986, with the filing of *Manypenny v. U.S.*, a lawsuit with the U.S. Eighth Circuit Court and designed to challenge the expropriation of reservation lands through the foreclosures brought about through illegal imposition of state and county taxes.

This was followed, in March of 1987, by the filing of another suit, *Littlewolf v. U.S.*, arguing that legislation such as the Settlement Act are unconstitutional insofar as they violate 5th Amendment guarantees to "just compensation," "due process," and "equal protection under the law." In January, 1988, we filed yet another suit, *Fineday v. U.S.* (also with the Eighth Circuit Court) predicated on essentially the same grounds as *Manypenny*. Through such litigation, we have intended to demonstrate to the federal government that we would not simply accept what it chooses to do to us lying down.

We are, however, faced with a U.S. court system which has generally shown itself to be less honorable than even the congress. The Eighth Circuit Court has historically rendered a number of adverse decisions concerning Indian land claims and the rights of individual Indian allottees (or their heirs) to their land parcels. While none of our cases have yet been decided, in February of 1988 Federal District Judge David Doty entered a preliminary ruling in *Manypenny* to the effect that he considered most of our legal issues "invalid," given that our land had been taken "so long ago." In substance, Doty's opinion holds that the federal and state governments cannot now be sued insofar as a "statute of limitations of six years was in effect at the time of the original taking in 1910," and that this statute would have been binding on all parties at that time, whether or not they had been aware of it, and whether or not the U.S. Bureau of Indian Affairs can now be shown to have defaulted on its admitted responsibility to have made Indians aware of it. To be clear: Doty did not suggest that our lands had not been illegally taken from us; he simply asserted that it doesn't matter.

A supreme irony may, however, be associated with Doty's reasoning and indeed the whole present governmental posture. Just as the Settlement Act and the judge's absurd argument would seem to be clearing the way for a resumption of non-Indian "business as usual" on and around White Earth, "For Sale" signs have begun to sprout on non-Indian-held properties all over the reservation. Literally thousands of acres of farmlands as well as numerous resorts and summer homes have been put on the market, most of it at what can be considered a fair price. The past decade of open Anishinabe land recovery activity has taken its toll in terms of the non-Indians' willingness to remain "invested" in the area, a factor which stands to severely undercut the thrust and utility of both federal and state land tenure policies. Hence, even if the strategy of litigation entered into by Anishinabe Akeeng fails to bear fruit in terms of actual courtroom decisions, the very fact that it has been attempted – that resistance has continued *regardless* of adversity – may lead to its ultimate success.

A Basis for Solution

Anishinabe Akeeng has always maintained that, so long as the people did not give up the struggle for land recovery, they would eventually win. The organization has held that, in the end, it would prove cheaper and "more practical" for the government to "buy out" local non-Indians (as opposed to "compensating" Indians), thereby quieting title in favor of the Anishinabe. This, in combination with the approximately 200,000 reservation acres presently controlled directly by government (federal, state and county) which could also be deeded back to the people of White Earth, would constitute the basis for a truly meaningful land "restoration." Recovery of their treaty-guaranteed landbase would, in turn, enable the Mississippi, Pillager and Pembina Bands to (re)construct viable socio-economic systems. This, to be sure, adds up to the only real basis for solution to the historically accrued problems now afflicting the Anishinabe.

So, while Anishinabe Akeeng and the people of White Earth continue to explore avenues of litigation by which to pursue land claims, the organization has also developed a long-term land recovery program based in other tactical expedients. The question of the final success of these particular plans of course

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remains to be seen. What is clear, however, is that the success or failure of the White Earth land struggle is pivotal to the issue of ongoing Indian land occupancy throughout the Great Lakes region, and perhaps the U.S. more generally. Thus, if the present plans fail, new ones will be formulated and the struggle will continue, as it has continued through the past dozen generations. For the Anishinabe, the question is one of sheer survival. The key here is that in struggle there are always both hope and potential. And in such things, survival may be found.

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Nuclearization of the Western Shoshone Nation

by Bernard Nietschman and William LaBon

All nuclear weapon states explode their bombs on unconsenting nations. No nuclear state tests bombs on its own lands and peoples. Americans don't set off nuclear weapons in Santa Barbara or Washington; they bomb the Western Shoshone Nation. Russians bomb Kazakhstan, Han Chinese bomb Uygur territory, French bomb Tuamotu Island peoples. Great Britain has bombed both Australian Aboriginal nations and the Western Shoshone. All nuclear states are composed of many nations but each is controlled by a single nation that has the bomb. Britain's bomb is English, not Irish; the Soviet bomb is Russian, not Ukrainian; the French bomb is Parisian, not Corsican; the Chinese bomb is Han, not Tibetan; and the U.S. bomb is White American, not Lakotan.

From England with Love

If the English were to test their nuclear bombs on or under Ulster (Northern Ireland), open warfare and worldwide condemnation would result. Instead, the English bomb distant nations to see how their nuclear weapons would work if they were used to bomb near-by nations. From 1952 to 1963 the English exploded nine above-ground bombs on at least 11 Aboriginal nations in Australia. Permission was not sought from Aboriginal peoples, nor were they warned. Radioactive contamination was widespread and entry into large contaminated areas is prohibited today. In 1980 an Adelaide newspaper interviewed a Yankunytjatjara survivor of a 1953 English above-ground nuclear test. The witness told of hearing the explosion and then seeing the black mist sweep across their land. The people dug holes in the sand dunes for their children; then the old people covered the children with their bodies. Two days afterwards, "everyone was vomiting and had diarrhea and people were laid out everywhere. Next day people had very sore eyes, red with tears and I could not open my eyes. Some were partly blind and I lost the sight in my right eye...Five days after the black cloud came, the old people started dying."[1]

During the late 1950s and early 1960s Great Britain used Christmas Island as a test site (today a part of independent Kiribati) and "borrowed" U.S.-annexed

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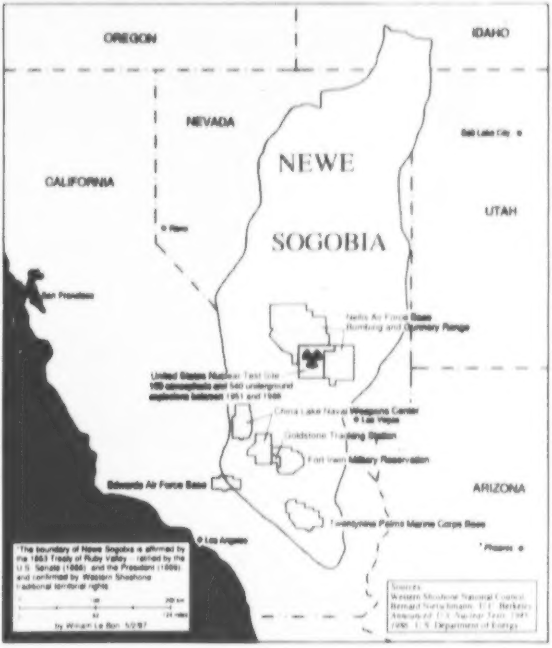
Enewetak Island (Marshall Islands) for other tests. The 1963 *Limited Test Ban Treaty* prohibited further atmospheric and underwater nuclear explosions. Great Britain and the U.S. concluded that underground testing on the annexed coral islands was too dangerous; they subsequently moved their nuclear weapons facilities from Pacific nations to the Western Shoshone Nation. (Curiously, as Great Britain and the U.S. were shifting from annexed coral island nations to an annexed desert nation, the 1962 Algerian Revolution forced the French from their annexed desert nation to an annexed coral island nation – Tuamotu in the Pacific.)

The Most Bombed Nation in the World

The U.S. dropped two nuclear bombs on Japan in 1945. Since 1963, the U.S. has exploded 651 nuclear weapons and "devices" on Newe Sogobia, the Western Shoshone Nation; Great Britain has set off 19 in the same region. Newe Sogobia could also be bombed by the U.S.S.R. if Washington and Moscow agree to set off nuclear explosions in each other's test site in order to calibrate test ban detection equipment. Additionally, Washington plans hundreds more nuclear explosions as part of its Strategic Defense Initiative ("Star Wars").

Because they destroy, the 670 nuclear explosions in Newe Sogobia have been classified by the Western Shoshone National Council as bombs rather than "tests." The purpose of a bomb is to destroy; if the "tests" were not destructive, they would be performed in the "Americans' " territory. A part of the nation of Newe Sogobia has been destroyed by the nuclear bombs from two nuclear powers. No treaty, accord, agreement, vote or sale exists that gives the U.S. permission to explode nuclear bombs or devices on or under the Western Shoshone Nation. The bombs constitute an attack against the Shoshone nation because they destroy part of it. The U.S. nuclear test site is located in another nation that does not consent to U.S. occupation and the explosion of U.S. nuclear weapons. The U.S. cannot show ownership of the test site; the Western Shoshones can.

In 1863 representatives of the U.S. and the Western Shoshones signed the *Treaty of Ruby Valley*. The U.S. proposed the treaty in order to end Shoshone armed defense of Sogobia, acquire gold from the territory and establish protected communication and transportation routes to California. President Lincoln needed gold from California and Sogobia to finance the North's forces in the Civil War, but Shoshone resistance blocked this strategic east-west corridor. The treaty ended hostilities; averted further massacres of unarmed Shoshones; and gave the U.S. use rights for stagecoach, railway and telegraph routes, military posts, and lands for mining, agriculture and ranching. The



The U.S. Military Invasion of the Western Shoshone Nation*

OREGON
IDAHO
NEVADA
Salt Lake City
NEWE
SOGOBIA
CALIFORNIA
UTAH
Reno
San Francisco
Nellis Air Force Base Bombing and Gunnery Range
United States Nuclear Test Site
100 atmospheric and 540 underground explosions between 1951 and 1986
China Lake Naval Weapons Center
Las Vegas
Goldstone Tracking Station
Fort Irwin Military Reservation
Edwards Air Force Base
ARIZONA
Twentynine Palms Marine Corps Base
Los Angeles
Phoenix
*The boundary of Newe Sogobia is affirmed by the 1863 Treaty of Ruby Valley ... ratified by the U.S. Senate (1866) and the President (1869) and confirmed by Western Shoshone traditional territorial rights
0
100
200 km
62
124 miles
by William Le Bon 5/2/87
Sources:
Western Shoshone National Council
Bernard Nietschmann, U.C. Berkeley
Announced U.S. Nuclear Tests 1945-1986, U.S. Department of Energy

treaty recognized Shoshone territorial sovereignty; no ownership rights were transferred. The U.S. Senate ratified the treaty in 1866 and President Grant confirmed it in 1869. The treaty is still in effect.

The nation of Newe Sogobia has an area of some 43,000 square miles (about the size of Honduras) bounded by western Nevada, southern Idaho, eastern Utah and the Mojave Desert in southeastern California. To invade and occupy this large nation the U.S. has employed a range of land-grabbing strategies not covered or permitted by the treaty. The U.S. has usurped almost 90 percent of Shoshone lands and resources and placed them under the control of the Department of the Interior (Bureau of Land Management, Forest Service, Park Service, Fish and Wildlife, etc.), Department of Energy (Atomic Energy Commission), Department of Defense, Department of Transportation and many other agencies used as part of the occupation. But Western Shoshone people assert their nation cannot be taken, sold or bought by people of another nation regardless of how much Indian land is needed for "national defense" or for conservation, recreation and profit for non-Shoshones.

Western Shoshone claims to their territory have promoted a Supreme Court case[2] over ownership – a setback to development of the MX "racetrack" missile system. Shoshone have title to the proposed Great Basin site and have been demonstrating against nuclear testing within Newe Sogobia. The U.S. has offered $26 million (about $1.50 per acre) to "extinguish" Western Shoshone title to territory covered by the treaty. Rather than sell their nation for $26 million, the Shoshones should receive approximately $670 million in back rent for land used for several U.S. military bases and installations in Newe Sogobia. This rough estimate is based on the area of the military bases and the amount of money the U.S. gives to Spain, Turkey and the Philippines in exchange for military bases in those countries.

Nuclear Trespassing

In 1986 the Western Shoshone National Council began issuing one-and two-day permits to be on Shoshone land to demonstrators at the Nevada test site. The strategy was to use arrests for trespassing as a means of demonstrating that the U.S. cannot accuse someone of trespassing on land it does not own. The government of the Western Shoshone wants to show that it is the U.S. who is trespassing. The following information accompanied the permit.

> The United States, Britain and France have all chosen to forcibly invade sovereign native nations for the purpose of testing nuclear weapons. Obviously, they do not want to contaminate and destroy their own lands, and expose their own people to the health hazards of such tests. The United States has tested nuclear weapons here in Nevada on the lands of the Western Shoshone Nation, in Alaska on the lands of the Natives and in the South Pacific on islands belonging to Polynesians. The Western Shoshone Nation is calling upon citizens of the United States, as well as the world community of nations, to demand that the United States terminate its invasion of our lands for the evil purpose of testing nuclear bombs and other weapons of war. We must have your political help because we are militarily unable to resist the United States. (Western Shoshone National Council, "Western Shoshone Land Rights and the Nevada Nuclear Test Site").

Whether the Western Shoshone and their increasing numbers of allies are ultimately able to triumph in their struggle is a critical issue and of the utmost importance, not only in terms of indigenous rights, but with regard to the very survival of the planet.

End Notes

1 *Akwesasne Notes,* Fall 1984, p. 18.

2 *United States of America v. Mary and Carrie Dann,* 470 U.S. 39, 1985.

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The "Go Road Decision"
A Frontal Assault Upon American Indian Religious Freedom

by Glenn T. Morris

On April 19, 1988 the United States Supreme Court denied relief to traditional Yurok, Karok and Tolawa Indians who had claimed their traditional sites would be destroyed by the construction of a logging access road on federal lands; the court said that the charge could not be upheld under the U.S. Constitution. In the case, *Lyng v. Northwest Indian Cemetery Protective Association,*[1] the Supreme Court overruled two lower court opinions which upheld the Indian claims. The lower court decisions found that the road, which was constructed in the Chimney Rock section of the Six Rivers National Forest in northern California, would have significant adverse effect on the Indians' ceremonial practices. The decisions held that such infringements violated the Free Exercise of Religion Clause of the First Amendment to the Constitution.

In reversing the lower court opinions, Justice Sandra Day O'Connor, writing for the majority, held that even if the Indians' culture was irreversibly harmed and their ability to practice their religion was destroyed by construction of the road, "the Constitution simply does not provide a principle that could justify upholding [the Indians'] claim." "Government simply could not operate," O'Connor concluded, "if it were required to satisfy every citizen's religious needs and desires."

For several years, indigenous leaders have criticized the weakness of the American Indian Religious Freedom Act (AIRFA)[2] because it did not provide sufficient protection for traditional practices on federal lands such as those involved in the *Lyng* case. In its opinion, the high court bolstered such criticism by writing that AIRFA "has no teeth in it," and that the statute creates no cause of action for indigenous peoples who believe the U.S. government has infringed upon their spiritual rights. *Lyng*, dubbed the "Go Road Decision" by its opponents, is only the latest in a series of recent federal court opinions in which the traditional practices of indigenous peoples have lost in a "balancing test" with the interests of the dominant society. In one such case, *Wilson v. Block,* the courts upheld the interests of federal leases to a ski resort over the claim of traditional Diné (Navajo) and Hopi people to use the same mountain for their traditional purposes.

In a vigorous dissent from *Lyng,* Justice William Brennan, Jr. – speaking in behalf of Justices Thurgood Marshall and Harry Blackmum, as well as himself – wrote that the majority position had stripped American Indian peoples "of any constitutional protection against perhaps the most serious threat to their age-old religious practices, and indeed their entire way of life." The majority position, Brennan continued, produced a "cruelly surreal result...that government action that will virtually destroy a religion is nevertheless deemed not to 'burden' that religion."

Such ramifications of the Go Road Decision may be particularly harsh for the traditional people of the Big Mountain area of the Diné and Hopi Nations. Under provisions of Public Law 93-531, the Diné are being forced to relocate from their sacred lands. In a move to forestall this relocation, attorneys representing the Big Mountain Diné have filed a lawsuit claiming that their forced removal from their land would represent a violation of their rights to free exercise of religion under the First Amendment of the Constitution because of fundamental spiritual links between the Diné and the territory at issue. The Big Mountain attorneys are holding that the courts should preclude the federal government from undertaking any affirmative steps which would result in the denial of indigenous spiritual freedom, particularly within federal "trust lands" (such as national parks or forests, and Indian reservations).

Although such site-specific claims have been made (sometimes successfully) in the past, this is the first time that forced relocation of an indigenous people has been the basis for an alleged infringement of their religious freedom. Given the magnitude of energy interests involved, and the fact that the outright destruction of the Big Mountain Diné as such is at issue, the stakes of the suit are particularly high.

According to Lee Brooke Phillips, lead attorney for the Big Mountain legal defense effort, the Diné are optimistic that they will be able to persuade the courts that their case is different from other Indian religious freedom cases which have been denied over the past few years. The acid test for such hopes may not in the end lie so much in the extent to which the Big Mountain argument can be distinguished from others as in the extent to which the federal judiciary may be able to overcome its intrinsic intolerance toward non-judeo-christian religions. In the sense that this is true, the Go Road Decision and the mentality it expresses looms as a major barrier to American Indians securing even rudimentary justice under the laws of the United States.

End Notes

1 56 *U.S. Law Week* 4292.

2 42 U.S.C.A. § 1996 (1978).

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The Continuing Struggle of Leonard Peltier

by Jim Vander Wall

how many have come before?
and I wonder how many more
must be lost to the Indian wars...

- Jim Page
A Song for Leonard Peltier

Leonard Peltier is a prisoner of war, one of the many victims of a covert war waged by the United States government against the American Indian Movement (AIM) and its supporters. This operation, conducted by America's secret political police – the Federal Bureau of Investigation (FBI) – during the mid-1970s, left scores of activists dead, hundreds injured, and many of the survivors imprisoned. Peltier, an AIM activist, is now serving two consecutive life sentences in Leavenworth federal prison, allegedly for the murder of two FBI agents. The two were killed in a June 26, 1975 firefight on the Pine Ridge Oglala Sioux Reservation in the state of South Dakota. Both the charges on which he has been incarcerated and the evidence on which his conviction was obtained are complete fabrications of the FBI.

Peltier, an Anishinabe-Lakota, was born in 1944 in North Dakota and grew up on the Turtle Mountain Reservation there. In 1958, during a period when the U.S. was attempting to "terminate" reservations and relocate Indians to urban ghettos, he joined his relatives in the Pacific Northwest, living in Seattle (Washington) and Portland (Oregon). Peltier first became involved with AIM-style politics when he participated in the 1970 occupation of Ft. Lawton, an abandoned military base which was legally Indian land. It was at Ft. Lawton that Peltier first became acquainted with AIM organizers.

After the occupation ended, Peltier became increasingly involved in AIM activities. In 1972, he was a Milwaukee (Wisconsin) organizer for the Trail of Broken Treaties, a march from reservations across the country to the U.S. government's Bureau of Indian Affairs (BIA) Building in Washington, D.C. intended to focus public attention on the oppression of Indian people. When the caravan reached Washington on November 3, Peltier was one of those chosen to direct security. While Trail leaders were attempting to negotiate with BIA officials on a twenty-point program of reforms, supporters waiting in the lobby of the BIA Building were attacked by club-wielding police. The police were overpowered and thrown out. What started as an attempt to evict the Indians turned into an occupation as the doors were barricaded to prevent the

Leonard Peltier in his cell at the "super-maximum" security federal prison at Marion, Ill., 1983. In 1985, he was moved to the standard maximum security facility at Leavenworth, Kan. (Photo: *Michel DuBois*)

police from re-entering and BIA employees left via the windows. Indians held the building until November 9, when the government agreed to an amnesty for the occupiers and to respond to the twenty points. The occupiers returned to their homes taking with them, in some cases, BIA records documenting its program of systematic expropriation of Indian lands and resources.

It was apparently following The Trail of Broken Treaties that Leonard Peltier was targeted for "neutralization" by the FBI. On November 22, 1972 Peltier was attacked in a Milwaukee diner by two off-duty policemen. He was beaten severely and then charged with attempted murder of one of the policemen. Peltier spent five months in jail before he could make bail, and went underground soon after he was released. He was eventually tried and acquitted on the charges. During the trial one of the policemen's former girl friends testified that around the time of the incident he had shown her a picture of Peltier and boasted of "catching a big one for the FBI."[1]

A Reign of Terror on Pine Ridge

In1972, as the Trail of Broken Treaties marched on Washington, Richard "Dick" Wilson was elected as Pine Ridge's Tribal President, becoming head of a colonial regime created by the U.S. to administer the reservation for the benefit of non-Indian ranchers and corporations. Pine Ridge was the scene of a growing activism on the part of traditional Oglalas (*i.e.:* those who attempt to follow the spiritual and cultural ways of their ancestors) to regain control of the lands and resources guaranteed them by the 1868 *Fort Laramie Treaty.* It was Dick Wilson's primary objective to suppress this movement. To this purpose he created a private army, called the GOONs (Guardians of the Oglala Nation), equipped and funded by the U.S. government. As the GOONs began a campaign of terrorism directed against traditionals and activists returning home from the Trail of Broken Treaties, the FBI – responsible for the investigation of serious crimes on Indian reservations – consistently ignored complaints of civil rights violations, harassment of activists and assaults. The FBI's inaction, in light of the increasingly serious nature of the charges, gave rise to the suspicion that the GOONs were acting with the collusion, if not the direction, of federal authorities. Complaints filed with the Bureau of Indian Affairs (BIA) police bore even less fruit. This was hardly surprising, since there was considerable overlap in personnel between the GOONs and the BIA police who, in any case, acted under Wilson's direction.

In February 1973, traditional Oglalas asked the American Indian Movement for assistance in dealing with GOON violence. On the 28th of the month, following a meeting near Pine Ridge village, a caravan of several hundred traditionals, AIM members and supporters drove to Wounded Knee and occupied the tiny village as a symbolic gesture of protest. They awoke the next morning to find themselves surrounded by scores of heavily armed FBI agents, U.S. marshals, GOONs and vigilantes. The occupiers issued a statement demanding hearings on treaties and an investigation of the BIA and gave the government the choice of negotiating their demands or removing them by force. The besiegers soon reinforced their positions with additional personnel and weaponry. Thus began the 71-day siege of Wounded Knee which focused world attention on the Pine Ridge Reservation.

U.S. military "advisors" were directly, and illegally, involved in the siege, almost from its inception and military weaponry poured onto the reservation. Tank-like vehicles called armored personnel carriers, Bell "Huey" helicopters, .50 calibre heavy machine guns, M-79 grenade launchers and M-16 assault rifles were brought to bear on the occupiers. The hundreds of thousands of rounds of ammunition fired into the hamlet claimed the lives of two warriors – Frank Clearwater and Buddy Lamont – and wounded dozens more. A number of supporters who were backpacking supplies into the village at night through the federal siege lines simply disappeared. It is generally believed that they were murdered by GOON patrols and were buried somewhere on the reservation. The siege ended in May of 1973 with an agreement by the U.S. government to negotiate on treaty issues.[2]

The siege led to the arrest of 562 people of whom 185 were indicted for the most part on charges which were completely groundless and eventually dismissed. Only 15 people were ever convicted on charges stemming from Wounded Knee, most on minor offenses such as interfering with a federal officer or on "collateral" charges resulting from the trials themselves, such as contempt. The judicial proceedings in the cases which went to trial were tainted with government misconduct. The "Wounded Knee Leadership Trial" of Russell Means and Dennis Banks is a classic example of such use of the courts to pursue political ends. Charges in this case were dismissed by Judge Fred Nichol after the government was found to have knowingly presented false evidence, infiltrated the defense team with an FBI informant and lied to the judge about both of these issues. In dismissing the case, an angry Judge Nichol wrote:

> I am forced to conclude that the prosecution acted in bad faith at various times throughout the trial and was seeking convictions at the expense of justice...The fact that incidents of misconduct formed a pattern throughout the course of the trial leads me to the belief that this case was not prosecuted in good faith or in the spirit of justice. The waters of justice have been polluted, and dismissal, I believe, is the appropriate cure for the pollution...[3]

Such a pattern of misconduct would emerge in the trials of many AIM activists over the next four years, but, unfortunately, few federal judges had the integrity of Judge Nichol.

While the Wounded Knee cases dragged on in the courts, violence escalated on Pine Ridge. In the two years following the beginning of the occupation, more than forty AIM members and supporters died at the hands of the GOONs and hundreds were victims of assaults and harassment. Dick Wilson was returned to office in 1974 in an election described by the U.S. Commission of Civil Rights as being "permeated with fraud."[4] Government inaction on Wilson's abuses was taken by Wilson as license to physically destroy AIM. In the first five months of 1975, the Commission on Civil Rights recorded eighteen homicides on Pine Ridge and the situation had become so tense that few dared to leave their homes without carrying guns. The rate of political murders on the reservation for the period 1972-1976 was 170 per 100,000, almost exactly the rate for Chile in the three years following the U.S.-supported coup of Augusto Pinochet.

Throughout this entire period the FBI failed to obtain a single conviction for the murder of an AIM activist and complaints of assault and harassment went uninvestigated. Confronted with this singular absence of success in carrying out their legally mandated mission, the FBI asserted that "lack of manpower"[5] prevented them from investigating complaints. Yet a brief look at FBI force levels during the same period shows that, between mid-1972 and mid-1973, the personnel assigned to the Rapid City resident agency – whose attention at that time focused almost exclusively on Pine Ridge – increased from 3 to 11. In 1973 a 10-man Special Weapons and Tactics (SWAT) team was assigned to the village of Pine Ridge, giving the reservation the highest ratio of agents to citizens of any area of the U.S. Clearly, it was not lack of manpower which impaired investigation of crimes against AIM members and supporters, but a conscious policy of selective prosecution. While the FBI compiled massive files on AIM members and jailed them for even minor offenses, the most serious crimes committed by the GOONs – murders, rapes, and felony assaults – were not so much as investigated. In effect, open season was declared on AIM and its supporters.

During 1973 and 1974, Peltier and the Northwest AIM group to which he belonged had become increasing involved in providing security support for AIM encampment on the land of the Jumping Bull family near the Pine Ridge village of Oglala. They came at the request of local organizers and traditional elders to protect the community from GOON attacks which had been particularly intense in the Oglala area, regarded as a bastion of traditionalism. During the late spring GOON activity decreased around Oglala due to the AIM presence. The camp became a center of spiritual activities, attracting local youth who were preparing for the sun dance.

During the same period, however, there were increasingly numerous indications of FBI interest in the AIM camp. During the first week of June, an FBI memo noted "there are pockets of Indian population which consist almost exclusively of American Indian Movement...members and their supporters on the Reservation."[6] The memo went on to state, falsely, that fortified enclaves had been built which would require armored vehicles to successfully assault. No such fortifications actually existed, but such disinformation had the effect of "psyching-up" agents for an armed confrontation with AIM.

The Oglala Firefight

On June 25,1975, FBI Special Agents (SAs) Ronald Williams and Jack Coler entered the Jumping Bull Compound, ostensibly searching for a young Oglala, Jimmy Eagle, on charges of "kidnapping, aggravated assault and aggravated robbery." The charges stemmed from a brawl involving Eagle and some other teenagers who had been drinking together. During the altercation, Eagle and his friends had taken a pair of cowboy boots from one of the other boys who later filed a complaint. The only warrant issued for Eagle, dated two weeks later, was for robbery. So with dozens of murders of AIM members and supporters uninvestigated due to "lack of manpower," two FBI agents were assigned to look for a teenager, suspected, at most, of the theft of a pair of used cowboy boots. Later the same day, three youths from the AIM camp were detained and questioned by the FBI on suspicion of being Jimmy Eagle. Interestingly, they were questioned not about Eagle but about who was at the camp.

By the next morning, June 26, 1975 it was clear that something ominous was in the offing. Oglala residents noted that large numbers of paramilitary troops – GOONs, BIA police, state troopers, U.S. marshals and FBI SWAT teams – were massing in the area. Around 11:30 a.m., SAs Coler and Williams drove back onto the Jumping Bull compound and headed toward the AIM camp. According to witnesses, the agents stopped their cars and began firing toward the houses in the compound. Hearing the gunfire, members of the camp believed themselves to be under attack from GOONs or vigilantes. They rushed toward the sound of the firing and, observing two white men in civilian clothes shooting at the houses, began to return fire. Shortly thereafter, federal reinforcements began to pour onto the Jumping Bull property. Radio transmissions from SA Williams indicate that the agents expected immediate reinforcements. Unfortunately for them, one of the teenagers from the camp had managed to position himself to cover the approach to the Compound, and shot out the tires of the first two cars to arrive, driven by SA J. Gary Adams and Fred Two Bulls, a BIA policeman and known GOON. Confronted with this unexpected turn of events, Adams and Two Bulls beat a hasty retreat, abandoning Coler and Williams to their fate.

By early afternoon, police forces involved in the firefight had increased to nearly 200. They faced a group of what, by FBI estimates, was about 30 Indians: the eight or so adults and teenagers from the AIM camp augmented by local supporters who had gravitated to the Jumping Bull Compound that morning upon signs of an impending federal assault. By 6 p.m. the FBI, further reinforced by a SWAT team flown in from Quantico, Virginia, decided they had sufficient personnel to assault the Compound. The assault team determined that Agents Coler and Williams were dead, killed relatively early in the firefight, and that the defenders had disappeared. Also killed in the firefight was AIM member Joe Stuntz Killsright, who, according to official reports, died from a bullet, fired at long range by an FBI sniper, which struck him in the forehead. Conflicting reports of the nature of Killsright's wounds have given rise to the suspicion that he may have been wounded during the firefight and then executed by the FBI.

The Invasion of Pine Ridge

Although the deaths of Agents Coler and Williams were probably an unintended consequence, the provocation of the firefight achieved its intended objective: the justification of a massive paramilitary assault on AIM. By the following day, there were more than 180 FBI agents on Pine Ridge. Along with U.S. marshals, BIA police, and GOONs they carried out raids for the next three months, both on Pine Ridge and the adjacent Rosebud Reservation, which were clearly designed to terrorize AIM members and supporters. Assault teams were equipped with the full panoply of counterinsurgency weaponry – M-16 assault rifles, M-79 grenade launchers, Bell UH-1B "Huey" helicopters, armored personnel carriers, fixed-wing aircraft and tracking dogs. With the excuse of searching for participants in the firefight, they broke into homes, conducted warrantless searches and illegal seizures, destroyed private property, harassed and threatened residents and arrested people on illegal "John Doe" warrants. A report of the U.S. Commission of Civil Rights noted, "...numerous reports and complaints of threats, harassment, and search procedures conducted without due process of law..." The chairman of the Civil Rights Commission, Arthur J. Flemming, characterized the operation as "an over-reaction which takes on aspects of a vendetta...a full-scale military type invasion." He went on to say:

> [The presence of such a massive force] has created a deep resentment on the part of many reservation residents who feel that such a procedure would not be tolerated in any non-Indian community in the United States. They point out that little has been done to solve numerous murders on the reservation, but when two white men are killed, "troops" are brought in from all over the country at a cost of hundreds of millions of dollars.[7]

To assure public acquiescence to such massive violations of constitutional rights, the FBI conducted an extensive disinformation campaign. Banner headlines across the U.S. proclaimed the FBI's story of how the helpless agents, carrying out their lawfully appointed duties, had been "ambushed" at "Wounded Knee" by AIM "guerillas" from sophisticated "bunkers." Newspapers which had shown no interest whatsoever in the systematic murder of dozens of AIM members on Pine Ridge, now printed detailed descriptions of how the agents were executed while pleading for their lives, their bodies riddled with machinegun bullets. Retractions of some of these claims a few days later by FBI Director Clarence Kelley were run on the back pages. The technique was so effective that even the "liberal media" denounced the victims, rather than the perpetrators, of this large-scale terrorist operation.

The Arrests, the Cedar Rapids Trial, and the Extradition of Leonard Peltier

From an original list of some thirty known or suspected participants in the firefight, the FBI targeted four for prosecution as the slayers of SAs Coler and Williams. One of these, Jimmy Eagle, was apparently included simply to justify the presence of the agents on the Jumping Bull property. There was no demonstrable connection between Eagle and the agents' deaths and eventu-

Combat-clad FBI personnel boarding a Bell UH-1B "Huey" helicopter, identical to those used in Vietnam, Pine Ridge, July 1975. (Photo: *Kevin Berry McKiernan*)

ally the charges against him were simply dropped. Not surprisingly, the other three indictments – on two counts of first-degree murder and "aiding and abetting" – were against what the FBI had decided was the leadership of the Northwest AIM Group: Bob Robideau, Darelle "Dino" Butler and Leonard Peltier. Dino Butler was arrested in a September 5 pre-dawn air assault on "Crow Dog's Paradise," the home of Brule spiritual leader Leonard Crowdog. More than 100 heavily-armed paramilitary troops descended on the medicine man's home in Huey helicopters to investigate a fistfight between teenagers, probably instigated by the FBI. Bob Robideau was arrested in Wichita, Kansas on September 10 when his car caught fire and exploded on the Kansas Turnpike. Peltier, in the meantime, had fled to Canada. He was arrested on February 6, 1976 by the Royal Canadian Mounted Police at the camp of traditional Cree chief Robert Smallboy near Hinton, Alberta.

Butler and Robideau were tried in Cedar Rapids, Iowa on June 1976 before Judge Edward McManus. McManus was certainly no friend of AIM, having earned the nickname "Speedie Eddie" for convicting and sentencing three AIM members on Wounded Knee charges in one week. Nevertheless, he allowed the defendants to argue that they had acted in self-defense in the shootout. Defense witnesses established that the atmosphere of terror which existed on the reservation contributed directly to the firefight, a situation for which the FBI was, at least in part, responsible. Presented with a picture of wholesale violence on Pine Ridge and FBI duplicity, the jury acquitted the defendants concluding:

> ...that an atmosphere of fear and violence exists on the reservation, and that the defendants arguably could have been shooting in self-defense. While it was shown that the defendants were firing guns in the direction of the agents, it was held that this was not excessive in the heat of passion.[*]

Faced with this bitter defeat, the FBI and federal prosecutors now vowed to convict the remaining AIM defendant, Leonard Peltier, by any means, legal or otherwise. Showing as little regard for the sovereignty of Canada as for that of indigenous nations, the U.S. violated the extradition treaty between the two countries by fraudulently extraditing Peltier. At the extradition proceedings the U.S. presented affidavits signed by a woman named Myrtle Poor Bear which stated that she had seen Peltier murder Agents Coler and Williams. It was later revealed that FBI agents had coerced Poor Bear into signing these false documents which they had prepared. Based upon this fraud, Canada ordered Peltier to be extradited and he was returned to the U.S. on December 16, 1976.

While the extradition was in progress in Canada, the FBI was making a careful analysis of what went wrong int he Cedar Rapids trial, the results of which were outlined in a memorandum of July 20, 1976. It noted that: 1) "...the defense was allowed freedom of questioning witnesses"; 2) the court allowed testimony concerning the FBI's illegal counterintelligence operations against other dissidents; 3) the government was forced to turn over agents' reports concerning the incident and the defense was allowed to cross-examine agents on discrepancies between their testimony and written reports; 4) the defense was allowed present evidence that the "...FBI had created a climate of fear on the reservation which precipitate the murders;" 5) the defense was uncontrolled in its dealings with the media; 6) the jury was not sequestered; 7) the jury was "confused" by "irrelevant" information presented by the defense, *i.e.:* testimony concerning massive FBI misconduct on Pine Ridge.[*]

Their analysis completed, the FBI then went shopping for a judge who was likely to be more cooperative with the prosecution than Judge McManus. They found one in Judge Paul Benson, a Nixon appointee. Peltier's trial began on March 21, 1977 in Fargo, North Dakota. It can hardly be a coincidence that Benson ruled: 1) the self-defense argument would not be allowed and the defense's ability to question witnesses would be restricted; 2) no testimony concerning the FBI's other illegal operations would be permitted; 3) defense attorneys would not be allowed to question agents on discrepancies between their written reports and their testimony; 4) evidence concerning the atmosphere of terror on Pine Ridge and the FBI's role in creating it was irrelevant; 5) there would be a media blackout on the trial; 6) The jury would be sequestered; 7) when the defense attempted to call Myrtle Poor Bear as a witness to describe how she had been coerced by the FBI into signing false affidavits implicating Peltier, Judge Benson would not allow it. He ruled, "...to allow her testimony to go to the jury would be confusing the issues, may mislead the jury, and could be highly prejudicial..." These rulings sealed Leonard Peltier's legal fate before the trial even began. Prevented from presenting a reasonable defense, his conviction was inevitable and successful appeal rendered unlikely.

In the end, the government's case rested on a weak chain of circumstantial evidence:

- Coroner's reports on the autopsies of the slain agents were presented which indicated that both had been killed by bullets fired at close range from a small-caliber, high-velocity weapon.

- Eyewitnesses testified that Peltier was seen carrying a .223 caliber (5.56 mm) Colt AR-15 rifle on the day of the firefight. The AR-15 is a small-caliber, high-velocity weapon. Prosecutors insisted that only one AR-15 was used in the firefight. However, the eyewitness testimony was suspect. For example, one of the witnesses, FBI Agent Fred Coward, testified that he identified Peltier (whom he had never seen before) through a 2x7 power rifle scope at a distance of more than 800 meters. Such an identification was shown to be impossible under the prevailing weather conditions due to atmospheric distortion. Other eyewitnesses later testified that they had been threatened and coerced by the FBI.

- An AR-15 rifle was recovered from Bob Robideau's exploded car in Wichita which was linked by the prosecution, in an extremely questionable manner, to the firefight.

- A spent .223 caliber cartridge was allegedly recovered from the trunk of SA Coler's automobile. Its pedigree, however, was somewhat suspect, since conflicting FBI documents and testimony indicated that it was found by two different agents on two different days.

- All that now remained to be done was for the cartridge to be associated with the Wichita AR-15. This link was provided by FBI Firearms and Toolmarks expert Evan Hodge. Hodge testified that based on extractor markings, the .223 caliber cartridge had been loaded into and extracted from the Wichita AR-15. He said that a more definitive firing-pin test had been performed but that it was "inconclusive." Since the AR-15 cannot eject cartridges more than about 5 meters, it was inferred that the cartridge had been fired near the agents' cars, *i.e.*, near where the agents' bodies had been found.

The government then argued that the agents had been killed with a weapon that had the characteristics of an AR-15 fired at close range; that such a weapon linked to Peltier, had been fired close to the location of the agents' bodies; and since that weapon was the only AR-15 used in the firefight Leonard Peltier must have used it to slay SAs Coler and Williams. There was little the defense could do to counter this argument, since Judge Benson would not allow agents to be cross-examined concerning discrepancies between their testimony and their prior written communications. Based solely on this flimsy chain of circumstantial evidence, the all-white jury found Peltier guilty of two counts of first-degree murder on April 18,1977.

Peltier was sentenced by Judge Benson to serve two consecutive life terms. Despite the fact that he had no prior felony convictions, he was sent to the infamous "super-maximum security" prison at Marion, Illinois. This prison, ostensibly the final stop for the most dangerous criminals in the federal penal system, had been increasingly used to intern political prisoners under the most severe conditions. An appeal of Peltier's conviction based on documented FBI misconduct, such as the Myrtle Poor Bear fraud, was rejected by the U.S. Eighth Circuit Court of Appeals. One of the members of the three-judge panel, Judge Donald Ross, commented in reference to the Poor Bear affidavits:

> But can't you see...that what happened happened in such a way that it gives some credence to the claim of the...Indian people that the United States is willing to resort to *any* tactic in order to bring somebody back to the United States from Canada. And if they are willing to do that, they must be willing to fabricate other evidence as well...[19]

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The court, however, opted to ignore evidence of FBI crimes and, citing the particular importance of the ballistics evidence, upheld Peltier's conviction. Shortly thereafter, its Chief Judge, William Webster, left the court to assume a new position as Director of the FBI. An appeal was filed with the U.S. Supreme Court which refused to hear the case without comment on February 11, 1979.

In 1981, as a result of a Freedom of Information Act suit, 12,000 pages of FBI documents pertaining to Leonard Peltier were released to his appeal team. Another 6,000 pages were withheld on the grounds of "national security." The documents directly contradicted, on several points, testimony given by FBI agents and other prosecution witnesses during the Peltier trial. The most serious contradiction was a Bureau teletype dated October 2, 1975, indicating that Evan Hodge had performed a firing-pin test on the Wichita AR-15 immediately after he received it and compared it to the cartridges found at the scene. Contrary to his trial testimony that the test was inconclusive, this memo stated that the AR-15 contained *"a different firing-pin"* from the one used in the firefight.[11] In other words, the memo called into question the validity of what the prosecutor deemed – and the courts agreed – was the most important piece of evidence in the case. Based upon precedents that the withholding of exculpatory evidence by the prosecution was grounds for a retrial, the appeal team filed a motion for a new trial with Judge Paul Benson in April, 1982. Since the FBI memos also revealed what were arguably improper pretrial meetings between the prosecution, the FBI and Judge Benson, he was asked to remove himself from the case. Given his previous record in the Peltier case, few were surprised when Benson rejected both of these motions on December 30,1982

Upon dismissal of the motions, an appeal was again filed with the U.S. Eighth Circuit Court of Appeals. In April 1984, the appeals court reversed Judge Benson's decision. Citing the apparent contradiction implied by the October 2 teletype, and the critical nature of the .223 casing to the government's case, the court ordered Judge Benson to hold an evidentiary hearing on the ballistics evidence.The hearing was held in Bismarck, North Dakota at the end of October, 1984. A very nervous Evan Hodge explained that the conflict between his testimony and the October 2, 1975 teletype arose from a misinterpretation. The teletype, he asserted, referred to comparison of the AR-15 to other cartridges found at the scene of the firefight, not to the .223 cartridge from SA Coler's trunk. When questioned as to why he had not tested that cartridge against the Wichita AR-15 immediately, Hodge claimed he was not aware of the urgent need to do so. This proved to be, as the Eighth Circuit Court was later to put it, "...inconsistent with...several teletypes from FBI officials, agents requesting [Hodge] to compare submitted AR-15 rifle with .223 casing found at the scene, and [Hodge's] response to these teletypes..."[12]

Hodge also committed perjury by testifying that only he and his assistant had handled the ballistics evidence, statements which proved to be false. Based upon a handwriting analysis of laboratory notes, Hodge was forced to admit that he "mis-spoke" when he made this assertion, and that the handwriting of another person appeared on the critical lab notes.

Hodge's testimony created a host of problems for the government's weak circumstantial case against Peltier. His claim that he failed to compare the Wichita AR-15 to the critical casing until late December or early January is literally incredible. Worse yet, if Hodge is to be believed, the FBI had numerous .223 caliber cartridges from the firefight scene fired by an *AR-15 which has never been identified*. Either Hodge lied in his testimony that the .223 caliber cartridge had been matched to the Wichita AR-15 or the prosecutor lied when he asserted that only one AR-15 had been used in the firefight. Furthermore, the fact that Hodge was willing to commit perjury to conceal the fact that persons other than himself and his assistant had possession of the critical evidence, cast a shadow of doubt on the chain of custody of the .223 cartridge, and raised the possibility that the cartridge could have been inadvertently or deliberately switched in the lab. Faced with contradictions of this magnitude, the court deliberated for almost a year before holding oral arguments on October 15, 1985.

In a tacit admission that their circumstantial case based on the ballistics evidence was falling apart, the federal prosecutors now put forth the argument that Peltier had been guilty of aiding and abetting in the deaths of the agents, not as the principal. This relieved the government of having to place Peltier near the agents with the AR-15. "We can't prove who shot those agents,"[13] prosecutor Lynn Crooks admitted. When asked if Peltier had been aiding and abetting Butler and Robideau (who had been determined by a jury to have acted in self-defense), he replied:

> Aiding and abetting whoever did the final shooting. Perhaps aiding and abetting himself. And hopefully the jury would believe that in effect he did it all. But aiding and abetting, nevertheless. [14]

The appeals court, after deliberating for nearly a year, handed down their decision in the case on September 11, 1986. They rejected the government's argument that Peltier had been convicted of aiding and abetting, noting he had clearly been tried as the principal. They also noted that the prosecution's assertion that a single AR-15 had been used in the firefight was suspect, citing evidence of several such weapons. Despite the contradictions exhibited by the prosecution's arguments, the Court upheld Peltier's conviction. They declared that the newly discovered evidence created only a possibility, not a

Peltier defense attorney William Kunstler (center) denounces FBI duplicity involving his client following oral arguments before the Eighth Circuit Court of Appeals in St. Louis, Mo., October 1985. (Photo: *Cate Gilles*)

probability that – had it been known at the time of the trial – the jury's verdict would have been different. Hence, according to a 1985 precedent established by the supreme court, the verdict would stand. In defense of this dubious decision, the court argued:

> There are only two alternatives..to the government's contention that the .223 casing was ejected into the trunk of Coler's car when the Wichita AR-15 was fired at the agents. One alternative is that the .223 casing was planted in the trunk of Coler's car either before its discovery by the investigating agents or by the agents who reported its discovery. The other alternative is that a non-matching casing was originally found in the trunk and sent to the FBI laboratory, only to be replaced by a matching casing when the importance of a match to the Wichita AR-15 became evident...*We recognize that there is evidence in this record of improper conduct on the part of some FBI agents, but we are reluctant to impute even further improprieties to them* [emphasis added].[19]

It is clear, however, that it is not a matter of "improper conduct by some FBI agents," but of an illegal program of political repression coordinated at high levels within the Bureau. The probability of such a pattern of abuse resulting from the random actions of overenthusiastic individual agents is vanishingly small.

The decision of the appeals court is the logical outcome of judicial collusion with the FBI's plan – enunciated in their July 20,1976 report – to prevent Peltier from establishing the political context of the firefight. Looked at in the narrow context prescribed by Judge Benson's rulings, it is possible to conclude that the new evidence would not have changed the jury's verdict. Viewed in the context of FBI counter-insurgency operations on Pine Ridge, it is not only probable, but – as the Cedar Rapids trial demonstrated – certain that the outcome of the trial would have been different. The Eighth Circuit Court rejected motions by the defense team for an *en banc* rehearing of the case. Leonard Peltier's "legal remedies" were exhausted on October 5, 1987 when the U.S. Supreme Court again refused to hear the case without comment. Barring parole or presidential commutation of sentence, Peltier faces two consecutive life sentences in prison without legal recourse.

Conclusion

Today, the case of Leonard Peltier serves as a symbol – in both a positive and a negative sense – to indigenous people everywhere who are struggling against illegal expropriation of their lands and destruction of their cultures. Peltier's uncompromising resistance fueled the growth of an international movement which had focused attention not only on his case, but on broader issues of indigenous land rights and political imprisonment in the United States. Literally millions of individuals worldwide have written letters and signed petitions demanding a new trial for Leonard Peltier.They have been joined by fifty members of the U.S. House of Representatives, fifty-one members of the Canadian Parliament (including the Solicitor General at the time of Peltier's extradition), the Archbishop of Canterbury, Nobel Peace Prize winner Bishop Desmond Tutu, and many other political and religious leaders. In 1986, Peltier was awarded the International Human Rights Prize by the Human Rights Commission of Spain.

In the negative sense, the U.S. government has made Leonard Peltier an example of how far it is willing to go to destroy a movement which is committed to defending the rights of indigenous peoples. The case provides a clear message that the ostensible protections under U.S. law of civil and human rights are fictional where matters of "state security" are concerned. The systematic program of political repression of dissidents demonstrated in the Peltier case belied the U.S. government's publicly articulated advocacy of human rights. Until Leonard Peltier is freed, it is a fundamental disservice to political prisoners in other countries for the U.S. to advocate their cause. Their struggles are cheapened and potentially discredited by their cynical use as instruments of cold-war propaganda.

Leonard Peltier continues his work as an activist from his prison cell. He has used the publicity surrounding his case to focus attention on wider issues such as the denial of religious rights to indigenous prisoners, denial of critical medical treatment to prisoners and other violations of international human rights conventions. Meanwhile, his supporters are calling for a Congressional investigation into the FBI's criminal activity and misconduct which led to his imprisonment. In light of recent revelations concerning similar FBI attacks on the Committee in Solidarity with the People of El Salvador (CISPES) and other such groups working in the U.S. for human rights, public sentiment may be more favorable to such a proposal. Leonard Peltier may yet be proven innocent and returned to freedom. Until that time, his name remains a rallying cry for the struggle of all indigenous people and a condemnation of the U.S. government's blatant disregard for human rights within its own borders.

End Notes

1 For the best account of Peltier's early history and involvement in AIM, see Matthiessen, *In the Spirit of Crazy Horse*, Viking Press, New York, 1983, pp. 33-58.

2 The Wounded Knee siege and the events leading up to it are described in ibid., pp. 59-83. Also see *Voices from Wounded Knee, 1973*, Akwesasne Notes, Mohawk Nation via Rooseveltown, N.Y., 1974.

3 Quoted in *New York Times*, September 17, 1974.

4 U.S. Commission on Civil Rights, *Report of Investigation: Oglala Sioux Tribe, General Election*, 1974, U.S. Commission on Civil Rights, Washington, D.C., October 1974.

5 United States Department of Justice, *Report of the Task Force on Indian Matters*, Washington, D.C., 1975, pp. 42-43

6 Memorandum, SAC Minneapolis (Joseph Trimbach) to Director, FBI, dated June 3, 1975 and titled, "Law Enforcement on the Pine Ridge Indian Reservation."

7 Letter from the Chairman of the U.S. Commission on Civil Rights, Arthur J. Flemming, to U.S. Attorney General Edward S. Levi dated July 22, 1975.

8 Quoted in Matthiessen, *op. cit.*, p. 318.

9 See Messerschmidt, Jim, *The Trial of Leonard Peltier*, South End Press, Boston, 1984, pp. 33-41.

10 *United States v. Leonard Peltier,* Criminal No. C77-3003, "Motion to Vacate Judgement and for a New Trial," at 7326-27.

11 Teletype, Director, FBI, to SAC Rapid City (Norman Zigrossi), dated October 2, 1975 and captioned "RESMURS – PHYSICAL EVIDENCE – [deleted]."

12 United States Court of Appeals for the Eighth District, "Appeal from the United States District Court for the District of North Dakota," *United States v. Leonard Peltier* (written by Judge Gerald Heaney), September 11, 1986, p.9.

13 Transcript of Oral Arguments before the United States Court of Appeals for the Eighth District, in *United States v. Leonard Peltier,* October 22, 1985, p. 18.

14 *Ibid.*

15 United States Court of Appeals for the Eighth District, "Appeal from the United States District Court for the District of North Dakota," *United States v. Leonard Peltier* (written by Judge Gerald Heaney), September 11, 1986, p.16.

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Section II.

Canada

Treaty and Constitution in Canada

A View From *Treaty Six*

by Sharon H. Venne

The people's governments of the indigenous nations[1] in North America were very complex prior to the arrival of non-indigenous peoples. Such government is based upon spiritual links to the land. Indigenous peoples believe they were placed on the North American continent to protect, honor and share Mother Earth.[2]

> Wherever I travelled in the Aboriginal World, there has been a common attachment to the land. This is not the land that can be speculated, bought, sold or mortgaged, claimed by one state, surrendered or counter-claimed by another. These are things that men do only on the land claimed by a king who rules by the grace of God, and through whose grace and favor men must make their fortunes on this earth...The land from which our culture springs is like the water and air, one and indivisible. The land is our Mother Earth. The animals who grow on that land are our spiritual brothers. We are a part of that Creation that Mother Earth brought forth. More complicated, more sophisticated than the other creatures, but no nearer to the Creator who infused us with life. [3]

The indigenous peoples, bound by their relationship to the land, developed a complex system of laws and government. The raising of children, caring for the sick, hunting, fishing, trapping, gathering and intergovernmental relations were all integrated with their links to the land. These laws existed since time immemorial. When the British colonization process reached the indigenous peoples in the area designated *Treaty Six* in 1876, the indigenous peoples were aware of the British Crown wanting to share the lands.[4] Prior to and after the treaty, the indigenous peoples retained their religion, laws and customs and maintained their special relationship to Mother Earth.[5] In this paper, we will go back into history from the indigenous peoples' perspective, to trace the European policy of attempting to destroy the meaning of the treaty and extinguish the rights of Canada's *first* nations. In doing so, we will reveal many of the critical issues presently confronting Native North America.

History

The arrival of Europeans onto the North American continent during the 16th century brought with it the importation of alien forms of government and legality. The invaders, however, were not powerful enough to attempt to generally alter the governmental or legal systems of indigenous peoples until

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the early 1800s. From 1664 through 1776, over forty-four "peace and friendship" treaties were signed between the aboriginal peoples of the east coast and the colonial powers of England and the United States. Early legal relations functioned in accordance with international law and were based on mutuality, with both sides having generally equivalent rights and status. During the late mid-1700s American Indian nations held the balance of military power in Europe's imperial struggle for control of North America and, as a result, the British government was forced to take formally pledge its permanent respect for indigenous peoples' national and territorial rights. King George III's *Royal Proclamation of 1763*[6] confirmed the basic international legal principles underpinning the then existing relationship between Europeans and North America's indigenous peoples. This law described indigenous nations not as subjects, but as fully *sovereign* entities connected to England only by treaty; to ensure peace, it was stipulated that all future political relations including arrangements for the sharing of land were to be accomplished by formal treaties. The *Royal Proclamation of 1763* also openly recognized the obligation of the Crown to obtain the negotiated consent of indigenous peoples before undertaking to effect alterations to their status and rights.

The principles of international law applicable to European/first nations relations in British North America were further defined by Lord Mansfield in the case *Campbell v. Hall* in 1774.[7] Here, it was acknowledged that a European sovereign could only acquire jurisdiction over territory:

- by discovery and occupation, if the land was unoccupied;
- by conquest; or
- by agreement with the local sovereign people.

Although the European powers had initially attempted to treat North America as vacant and therefore *inherently* within the scope of European sovereignty, the 1774 case acknowledged that North American lands had always been occupied by indigenous peoples and were thus not *terra nullius*.[8] Further, in most cases the indigenous peoples were neither at war with the invaders nor had they been conquered by force of arms. Consequently, the *only* means by which Europeans could acquire any sort of valid jurisdiction in North America was through treaty with American Indian nations.[9] It follows that by the late 1860s, when there was mounting pressure upon British settlers to further expand westward into indigenous peoples' territory, the British government extended its treaty-making process into what it called the Northwest: "As a result of all these pressures for land, a vast land surrender scheme was devised which was to see the signing of 483 treaties, adhesions and land surrenders between 1781 and 1902."[10]

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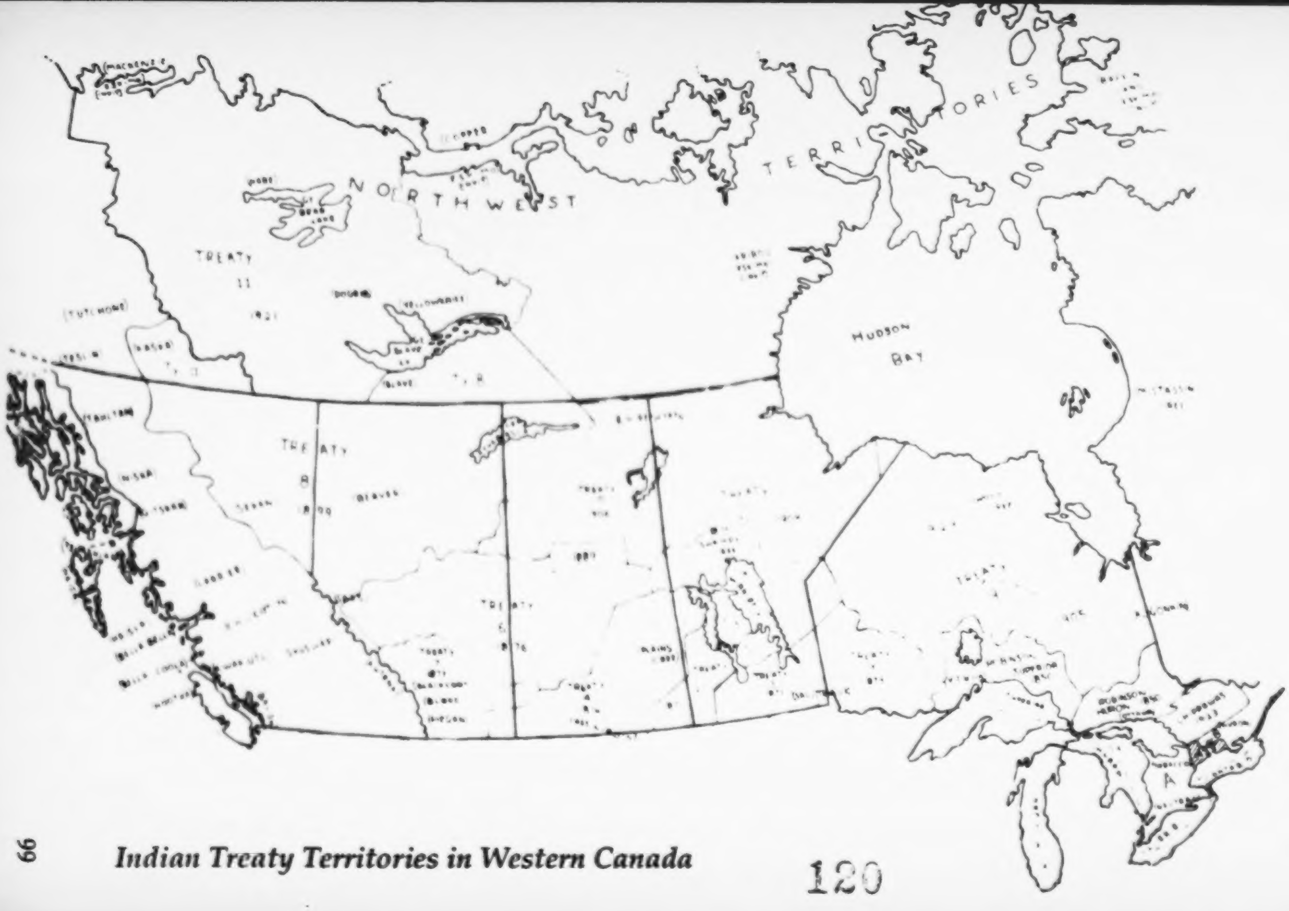
These treaties were gradually undermined through the British judicial process of "interpretation." Early pre-confederation treaties did not specifically state that the Indian nations were self-governing because it was assumed by both parties that indigenous self-government not only existed, but would continue. Indians were not considered (by either themselves *or* the Crown) to be in any way subject to British jurisdiction, and it was not until 1823 that the local colonial government of upper Canada raised the question of whether a proposed policy could legally "[make] individuals of the Indian tribes amenable to our laws."[11] In response, British officials reported that "there appears to exist no treaty that can give color to the idea that an Indian is not considered amenable to the Law for offenses against another Indian within Her Majesty's dominions."[12] Despite the fact that this was in direct contradiction to King George's *Royal Proclamation* barely 60 years before, parliament was held thereafter by colonial authorities to be supreme in all dealing with indigenous peoples.

Underlying the shift in policy was the adoption of the notion of "trusteeship," defined during the 16th century by Spanish theologian Bartholomé de las Casas, and developed in Canada as a legitimation of Euroamerican colonialism. Under this doctrine, Canada defined itself as the figurative "adult" (usually called "civilized") nation in a relationship with a host of indigenous "child" (usually called "savage") nations; the "adult" in this case simply assigned itself a "fiduciary responsibility" to oversee the affairs of its "children" – including exercise of "trust" control over their property – until such time as they could be determined (by the "adult" government itself) to have reached "maturity" and "competence." Hence,after supposedly "sacred and inviolable" treaties were signed with Indian nations, for whatever momentary tactical advantage these might yield Britain *vis a vis* her many enemies, they were disregarded if in conflict with colonial imperatives. British policy after the 1830s had three objectives: 1) the introduction of christianity to "civilize" the "savages," 2) laws to segregate Indians away from white civilization, and 3) the establishment of special Crown offices and laws to "protect" Indians.

Trusteeship supported the claims of Europeans for unilaterally-created rights to new territories. European sovereignty was thereby asserted, and rapidly found "legitimacy" in the courts of the land. This was, contrary to the virtual whole of the documentary record from 1600 onward, clearly expressed by a judge in the case of *R. v. Syliboy* who found that "...the Indians were never regarded as an independent power. A civilized nation first discovering a country of uncivilized people or savages held such country as its own...[and] the savages' rights of sovereignty were never recognized."[13] The Canadian courts next adopted the self-serving legal fiction of European ownership of


NORTH WEST TERRITORIES
TREATY 11 1921
TREATY 8 1899
TREATY 6 1876
TREATY 9
HUDSON BAY

Indian Treaty Territories in Western Canada

Treaty feast at Ft. Rae, N.W.T. ***circa*** **1930 (Photo:** ***Hudson's Bay Company*****)**

indigenous lands based on the notion of *terra nullius,* already admittedly disproven through the 1763 *Royal Proclamation,* to deny full expression of indigenous national and territorial rights. In 1883, the British Privy Council in the *St. Catherine's Milling Case*[14] supported a provincial government position that the Crown had absolute ownership of Indian lands, and in *Attorney General of Ontario v. The Bear Island Foundation,*[15] the courts defined Indian land interests as a "usufruct" terminable at the pleasure of the sovereign. Previously, the Canadian Supreme Court[16] had concluded that federal legislation overrode Indian treaty rights because parliament had never implemented such treaties by legislation. Thus, Indian treaties which had been entered into on the basis of international law by *both* parties were derogated by the colonial courts to domestic agreements of a non-legal nature, subject to unilateral recall or modification by Canadian statute.

All this sophistry notwithstanding, however, the British government *had* by treaty conveyed *de facto* recognition of the sovereign status and rights of Indian nations inside what had become Canada. Within the traditional Indian legal system, what is not included in the treaty is retained as an exclusive right given by the Great Spirit.[17] This is not altogether different from the principles of English common law, which hold that any power or right not specifically ceded is retained by the occupier of the land (in this case, the indigenous peoples of Canada). Under the treaty process, indigenous nations did not give up their right of self-government, the right to maintain their laws and their sovereignty.[18] In these critical areas, indigenous peoples retained their rights despite the current views and contrary court findings of the non-indigenous settler government.

The political status of indigenous peoples within the Canadian state remains unsettled, regardless of the pronouncements of the Ottawa government. From the arrival of settlers, the establishment of colonies and the emergence of neocolonial local government, Indians were separate nations connected with the British Crown through international treaties, and thus were definitionally excluded from defining their specific "internal" relations with the Crown. The Crown's policy of protection and assimilation was to be carried out by the gradual imposition of British law on the Indian nations. According to a 1983 Canadian Parliamentary *Report on Indian Self Government*, "The Indian peoples played no part in negotiating (Canadian) Confederation, or in drafting the British North America Act of 1867 which under section 91(24), assigned legislative authority with respect to 'Indians and Lands Reserved for Indians' to the federal government."[19] Self-evidently, the question of Indian status in Canada will not be resolved until indigenous people *do* play a full and determinative role in deciding the matter.

The Indian Acts[20]

Over the past 100 years, the Canadian government has taken control over the legal identification of indigenous nations by defining Indian "bands" as mere "administrative entities," authorized only to act as local municipal authorities under ministerial license. Band councils, regulated by the Indian Act, must seek federal approval to administer their own affairs in at least (80) separate and federally mandated procedures. Under the current Indian Act, the Canadian government has unilaterally taken control of the decision-making processes in Indian communities, *i.e.:* elections, referendums, and by-law powers. The Canadian government's position regarding membership in Indian bands has been directed towards the destruction of Indian communities by depopulation (for the U.S. parallel, see the Jaimes essay in this volume). Under this policy, Indians are deemed incapable of managing their own definition of tribal affiliation, and indigenous peoples' control over their own identification was usurped by a comprehensive Canadian code defining "status" and "band" Indians. This overall situation prevails despite the fact that through their treaties, indigenous nations encapsulated within the present Canadian state reserved and retained their customary forms of government, including the right to define the mechanisms for expressing their legitimate consent to all policies which directly effect them. As concerns the Ottawa government's denial of the right of indigenous peoples to control their own membership (or, perhaps more properly worded, "citizenship in their nations"), it was determined by the United Nations' Human Rights Committee to be a racist policy.

The intended destruction of Indian identity has deep roots in Canadian colonialist tradition. From the early 1880's, the parliament enacted laws specifically designed to destroy indigenous religion and culture to promote assimilation. The potlatch, sundance, and many other ceremonies were criminalized, and hundreds of Indian participants in these activities were imprisoned prior to 1951. Along this same line, the 1886 Indian Act specified that all indigenous children between the ages of 6 and 16 were to be "educated." While it is true that there were provisions in many treaties regarding education, it is equally clear that the indigenous signatories never envisioned this to mean a situation in which their children would be forcibly removed from their homes and placed in distant mission schools where they were denied their language, religion, culture and customs and indoctrinated to become "good" imitations of Euroamericans. The children thus abducted were not taught to survive outside of the school system, yet at the age of sixteen they were returned to their communities ignorant of themselves and their people.[21] Not only was this policy severely damaging to the individual children and families involved, it is difficult to perceive this as anything other than an extremely cynical governmental plan to utilize Indian peoples' children as instruments with which to undermine and permanently destabilize indigenous societies.

Indigenous landholdings, negotiated in treaties as sacred and inviolable homelands totally under Indian jurisdiction and control, also became by legislation devices for assimilation. Title to these lands was usurped by the Crown, and Indian land and assets are now controlled under a "fiduciary" relationship where the Minister of Indian Affairs can and does determine what is in the "best interest" of the community. Indigenous nations view their reserves as unsurrendered traditional territory which it has been their intent to keep untainted by the non-indigenous peoples. These lands were kept by the native peoples as a place to live, bury their dead and to carry on their sacred ceremonies; to retain their identities as peoples, they *must* maintain their landbase so that they may continue their relationship with Mother Earth. In a very real sense, the alternative is that these peoples, *as such,* will go out of existence altogether (a matter customarily referred to as "extinction" and, when induced by state policy, "genocide"). It is therefore an entirely false premise asserted by Ottawa that what Indians "need" is for their reserves to be liquidated so as to end their "isolation" from "the mainstream."

From 1882 to the present, massive surrenders of native landholdings were engineered by the government under provision of its Indian Act. Most reserve land surrenders came about as a result of fraud, misrepresentation and unfulfilled agreements. The Canadian courts have upheld the notion that a simple majority of band members attending a land surrender meeting are

Indigenous self-governance in Canada: the Six Nations Grand River Reserve Council, Ontario, 1925. (Photo: *Public Archives of Canada*)

competent to liquidate a reserve.[22] The Indian Act even went so far as to make it a criminal offense for any one to pursue indigenous land rights and other claims; Section 141 of the Act stated, "Every person who...raises money for the prosecution of a claim...shall be guilty of an offense and liable...to imprisonment for a term not exceeding two months." Existing "specific claims" settlement mechanisms have been unilaterally defined by the government so as to limit treaty redress and to minimize Crown liability. There can be little reasonable doubt that the thrust of Canadian policy for more than a century has been geared not only to expropriating the "assets" of indigenous peoples, but to obliterate their societies as a means to that end.

Acceleration of Assimilation

By 1951, the Canadian government decided to take a new direction in relation to native peoples.

> The government was no longer to promote the adoption of the "whiteman's mode of life," but instead the Government...announced that "the Indian...should retain and develop many of his native characteristics,

> and...ultimately assume the full rights, and responsibilities of democratic citizenship,...the basic difference between the aborginal peoples' cultural lives and their lives as citizens of Canada. The Government could afford to encourage the cultural distinctiveness of aboriginal peoples, for in the spirit of the time, this was consistent with the government's approach to other minority groups. The Indian Nations would thus acquire a status identical to that enjoyed by other minority immigrant ethnic groups in Canada.[33]

This policy, developed and announced in 1951, has not changed. Canada, for the last thirty-eight years, has tried to domesticate the treaties and terminate the indigenous rights flowing from treaty.

In 1960, the conservative government under John Diefenbaker extended the vote to indigenous peoples who, in 1954, had been designated as citizens of Canada by unilateral decree. Indian consent was not obtained with regard to either the imposition of Canadian citizenship upon them, or the subsequent conferring of their "right as Canadian citizens" to vote in that nation-state's elections. Both efforts at homogenizing Indians within the aggregate Canadian polity were undertaken by Ottawa despite (and undoubtedly to partially negate) the remaining special legal and political status of Indians and Indian lands as defined in the Indian Act. The result has been a further marked diminishment of Indians' constitutional position under Canadian law, recently formulated by the Supreme Court of Canada as follows:

> Indians are citizens and in affairs of life not governed by treaties or the Indian Act; they are subject to all the responsibilities, including the paying of taxes, as other Canadians.[34]

In 1969, the Canadian government disclosed its true agenda concerning indigenous peoples. Within the integration proposals made in the now infamous *Federal White Paper*, all native reserves would be eliminated, treaties terminated, federal recognition of any special status for Indians would be withdrawn, and constitutional references to "Indians and Indian Lands" made a deadletter. Although large-scale indigenous rejection forced the government of the day to formally defer its full agenda pending "further consultation," analysis of existing policy initiatives reveals that the integrationist motive remains unchanged. Ottawa has simply moved a bit slower than it initially planned. Today, the "special status" of Indians in Canada is not based in any real way upon treaty associations or the corresponding concept of nations within a nation or state. Rather, it is predicated entirely in the federally-created notion of trusteeship. And now the concept of the existing federal/Indian fiduciary relationship, as recently enunciated by the Canadian supreme court in the *Guerin* case,[35] is openly and *officially* founded upon the notion of a superior people (Euroamericans) giving benefits to inferior colored people (Indians).

Constitutional Renewal

Constitutional renewal became a vital issue for Canadian politicians in the early 1970s, an era of emerging *Quebecois* nationalism and federal-provincial tensions. Additionally, many Canadian lawyers (and law-makers) found it repugnant that the parliament of the United Kingdom retained sole authority to amend the Canadian constitution. By 1978, Canada's plans for constitutional renewal were advanced, but indigenous peoples had been excluded from all discussions. Constitutional amendments proposed in 1980 included reference to "aboriginal peoples," but only in negative terms, proposing that the Charter of Rights would not deny the existence of "undeclared" indigenous rights. It had become evident that the Canadian government was prepared to move ahead on its "constitutional patriation" project without dealing with indigenous rights in any substantive manner at all. Then, in response to considerable native outcry, Prime Minister P. E. Trudeau stated that "aboriginal issues" would be dealt with as a second phase of constitutional renewal.

In an attempt to protect their treaties from further encroachment by the provinces and the federal government, the chiefs of the indigenous nations in western Canada decided to take their case to the British courts; the decision to do this was taken insofar as the treaties had been signed with the British Crown rather than with the Canadian government *per se*. In the case of *R. v. Secretary of State for Foreign and Commonwealth Affairs: ex parte Indian Association of Alberta and Others* (1981),[26] the chiefs asserted that the Crown's treaty obligations to them were owed by the queen in right of her governance in the United Kingdom. The argument evolved around the *Royal Proclamation of 1763* and a Crown-approved Canadian constitutional convention requiring that indigenous rights be dealt with prior to settler-state independence. They argued that this convention had not been followed in the patriation of the Canadian Constitution.[27] In the end, the court of appeal in Great Britain evaded the issues raised by ruling that the Crown's obligations under its Indian treaties must have passed to Canada, though it could not determine the method or date of the alleged transfer.

At this point, an Indian rights lobby in the United Kingdom launched a major campaign, having numerous amendments tabled with which they hoped to modify the bill of Canadian constitutional particulars. These allies of indigenous people, organized under the rubric of the "Parliamentary Friends of the First Nations," held that the Canada Independence Act denied native peoples certain basic human rights, including the right of self-determination, and that parliament had an obligation to assure these in spite of customary conventions on non-interference in internal affairs in intra-commonwealth relations. The "Friends" argued vociferously that proposed post-independence conferences were structured for failure, and that existing methods of indigenous participation was not meaningful or genuine. This led to the writing of the "Canada Act" by the parliament of the United Kingdom. Before the Act could be passed, however, Canada preempted it, enacting an amendment to its proposed bill which called for constitutional conferences, including indigenous "representation," to be held in Canada. Hence, when the Canada Act did pass, it had been considerably altered and diluted; following Ottawa's formula, the British parliament left native peoples to be included in the constitutional process as mere invitees, while Canada's provincial premiers were allowed unprecedented power to define and limit indigenous rights.[illegible]

Constitutional Renewal Dies

During the spring of 1982, the British parliament passed the Canada Act into law. This resulted in two significant changes:

- Canada was released from 116 years of British colonial control over the Canadian parliament. Canadian governance now resided entirely in the federal parliament in Ottawa and the ten provincial legislatures.

- The long-standing treaty/trust relationship between indigenous peoples in Canada and the British Crown were totally severed, officially and forever. All responsibilities and obligations of trusteeship assumed by the British Crown toward upper British North America's (Canada's) indigenous peoples (by the treaties, the *Royal Proclamation Act of 1763* and other instruments) were abrogated and rendered null and void. By virtue of this single act, the British Crown formally withdrew from the exercise of its political responsibilities and other obligations to the indigenous peoples of Canada.

The British action left Canada with two separate and distinct political groups (three, if the *Quebecois* are acknowledged; even scores, if each indigenous nation is counted in its own right) which share neither common origins nor common aspirations. The irony of the situation is that while the

British parliament felt itself empowered to recognize and sanction establishment of a new and fully independent nation-state in North America, it professed to be "helpless" to resolve issues concerning the rights and political status of the indigenous nations which it *knew* to hold legitimate title to much of the new nation-state's landbase. The fate of these indigenous nations was left undecided: they could either give up and be absorbed into the society of Canada, or continue to struggle to exist as indigenous nations outside the Canadian federation (but to somehow coexist with the state of Canada). The choice was rather obvious. The elders and chiefs of the *Treaty Six* nations in western Canada – to name a prominent example – held a three-day meeting at Camp He Ho Ha" in January, 1983, reviewed the situation and, in their wisdom, declined to join the state of Canada. They selected the second alternative because, in their view, to choose the first option would have been to guarantee the certain destruction of their peoples, *as such*.

For a decade these chiefs, guided by the elders, tried to reach an accommodation with Canada. They sought to participate in the renewal of the constitution on the same footing as the federal government, contending that if indigenous peoples were to be expected to come under the mantle of the Canadian state, it must be as real partners, sharing equitably in determining the political and other powers of that state. Neither the British nor the Canadian governments were ultimately willing to deal with such aspirations seriously. Instead, the idea of formal indigenous participation in Canadian affairs – as legitimate sovereign nations with their own, autonomous governmental forms – was repeatedly rejected out-of-hand by the Ottawa. Had the peoples of *Treaty Six* and other indigenous nations been allowed to participate on any sort of equal footing with the state of Canada, the issue (and their future) could have been settled right then and there.

There is really no basis for confusion on this matter. Indigenous peoples' government(s) *could* have been recognized as having jurisdiction over their own territories within the overall state of Canada, thus forming a distinctly indigenous level of government functioning with the agreement of, or even under auspices of that state. This sort of arrangement *could* have brought about realization of the Indians' treaty relationships with the state of Canada, a circumstance readily implying the consent of indigenous peoples to the means by which their lives are governed. Canada *could* have truly lived up to the spirit and intent of its various obligations to native peoples, making of itself a model for democratic emulation the world over.

However, the federal government and the provinces chose to ignore the fact that the lands of Canada belong to its indigenous peoples. Although the treaties ensure the right of non-indigenous peoples to continue to use the land, in cooperation with Indian nations, Canada and the provinces deny that the treaties retain legal force and claim the whole of the land as being exclusively the property of the Canadian state. The failure of the government to achieve the promises afforded by constitutional renewal has created a deeply and perhaps permanently divided country. So long as the federal government of Canada continues to claim hegemony over all territory within its borders, the conflict will continue. Under such conditions, the very survival of indigenous peoples compels them to pursue full and independent sovereignty over their territories.

Where Do We Indigenous Peoples Go From Here?

The political vacuum into which native peoples were thrust as a result of the failure of Canada's constitutional process is similar to the position of those other indigenous peoples around the world following the independence of the various former colonies in which they are now trapped. For instance, when Portugal withdrew from East Timor in the 1970s after a long period of colonization, they left the Timorese in an ill-defined political situation and under physical Indonesian control. The Indonesian government "resolved" this confusion by simply confiscating East Timor and asserting its sovereignty over the Timorese. When the Timorese people did not willingly accept Indonesian authority, the Indonesian government used troops in the most ruthless possible fashion in order to enforce its claims, effecting its own form of colonial rule over the Timorese. Although officially "decolonized," the Timorese have been wantonly slaughtered by their new conquerors and forced to respond by acting on two fronts – military insurgency and diplomatic contacts at the United Nations – to win independence from Indonesia.

Similarly, the Papuan people of West Irian experienced a similar takeover of their homelands by Indonesia when the Dutch colonial occupation ceased in the 1960s. Indonesia claimed Papuan territory as its own and sent troops to enforce its claim. Through military insurgency, passive resistance and limited diplomatic efforts, the Papuans continue their struggle against Indonesian expansionism in an effort to secure either independence or free political association with Papua New Guinea. Or, to take another example, when the Dutch left West Irian, they created a circumstance not unlike the situation in British Honduras when the new state of Belize was formed. Britain's departure from the latter caused a vacuum in which the Kekchi people were taken over by the newly independent Belizian government. While all of these indigenous nations had little sympathy for their former colonizers (*i.e.:* Portugal, the Netherlands and Britain), they have even less sympathy or loyalty to their new colonizers (*i.e.:* Indonesia and Belize), each of which has used its own liberation as an expedient for denying liberty to others. Efforts to peacefully negotiate any form of independent or even autonomous political status by indigenous peoples have without exception been rebuffed by the neocolonial states. A result has been the contemporary proliferation of protracted violent conflicts and/or passive resistance by indigenous peoples against numerous states worldwide.

While many organs of the United Nations (the U.N.; a so-called "international" organization composed entirely of nation-states rather than nations, and from which nations are by definition excluded from full participation) have endorsed the actions of the new states *vis a vis* indigenous peoples, other U.N. entities like the Working Group on Indigenous Populations have viewed these recolonizations and the struggles they precipitate with a wary eye. Despite much state hypocrisy, indigenous nations have begun to use the U.N. as a medium in which they continue to pursue their rightful place within the international community. From Canada, the chiefs of the Treaty Six nations have actively participated in an international lobby since the first Indigenous Peoples' Land Conference held in Geneva, Switzerland in 1979. The consistent position taken by the chiefs has been that the treaties entered into with indigenous peoples represent legal, international agreements which must be respected and protected as such. This consistent message has been delivered at every session of the working group and at several Human Rights Commission meetings.* The chiefs have requested that there be a separate body of the U.N. set up to oversee the respect by states for the rights of indigenous peoples and the provisions of their treaties.

It has proven impossible to achieve anything resembling a just and fair settlement of such issues in Canada. Thus, the chiefs have delivered a call to the international community to help settle the relationship between sovereign indigenous nations and the Canadian state. There has been an attempt by the U.N. working group and a human rights subcommission to appoint a special rappartour to review the treaties and related indigenous land claims. Instructively, full approval by the Human Rights Commission for this appointment has been blocked by Canada, the U.S., and other states with indigenous peoples imbedded in their presently claimed territoralities. For obvious reasons, such states do not want the U.N. investigating the treatment of indigenous peoples by the neocolonists.

Another aspect of the international efforts undertaken by the*Treaty Six* chiefs involves establishing contacts with other indigenous peoples in the neocolonial world. In this regard the chiefs co-hosted the First Nations Commonwealth Conference held in Vancouver, British Columbia in October, 1987. There, they met with the Maori of New Zealand, the "Aboriginals" of Australia, and others to discuss their common difficulties in being colonized by the British legal system. The Maori have a treaty but the Kooris and other

Aboriginals of Australia are now in the process of discussing their political relationship with Australia as that country attempts to develop a constitutional process. The result of the conference was a continuation and enhancement of an effort to create a comprehensive information exchange between indigenous peoples to aid in the development of strategies to deal with common issues.

The First Nations Commonwealth Conference was held just prior to the Commonwealth Heads of Government Meeting. As former colonies of the British Crown, they meet to discuss joint problems. Usually the meetings are preoccupied with the South African situation. The indigenous conference wanted to introduce into the commonwealth meeting agenda matters of unfinished business in relation to indigenous peoples in neocolonial countries represented by the heads of state in attendance. There was a call for the commonwealth secretariat to undertake a study of native peoples within the commonwealth and to report its findings at the next commonwealth meeting (to be held in 1989), but of course the commonwealth heads of government did not act upon this submission by indigenous peoples. There are plans underway to hold another indigenous strategy conference prior to the next commonwealth meeting.

In 1986, the *Treaty Six* chiefs immediately came to the support of the Cold Lake First Nations when the federal government and the Province of Alberta tried to terminate the fishing rights of these peoples within their traditional fishing areas. The Cold Lake First Nations chief and council took the position that their right to fish for food was treaty right, and told Canada it should "build bigger jails" to hold them, as they would fight for their treaty. Ottawa and Alberta capitulated, allowing the fishing to proceed as it has done since time immemorial. Over the past four years the *Treaty Six* chiefs have organized themselves into a loose confederation. Under *Treaty Six* there are forty-eight separate nations.[11] Each month the chiefs, elders and citizens of the communities meet to discuss the treaty and to plan joint actions. The meetings are held in the communities, in their own language, and have no formal structure other than to renew their relationship to the land by having their sacred ceremonies prior to the start of each meeting. The chiefs are not fighting a battle with guns and bullets but with paper and words – the government of Canada's paper and indigenous peoples' oral tradition. The more international support the chiefs of *Treaty Six* and other native leaders can attract to their struggle, the more difficult it will be for Canada to terminate the treaties of indigenous peoples in that country. To the contrary, given enough international exposure of its policies, it seems probable that Ottawa will be forced to increasingly conform to its real treaty obligations. In this way, the treaties will last as long as the sun shines and the waters flow.[12]

End Notes

1 In this paper I use the term "indigenous peoples" as my people existed and come from this North America continent. We are not Indians as asserted by Christopher Columbus when he fell upon the shores of our great land many years ago. In Canada the federal government has many definitions for indigenous peoples, including treaty Indians, status Indians, non-status Indians, etc. These categories are not relevant to indigenous peoples as being an indigenous person comes from within and not by outward titles and categories.

2 In October 1983, the elders of *Treaty Six* came together for five days to discuss the treaty and the formation of this treaty. During the course of the five days the elders' knowledge concerning our land and our rights became a discussion of our spiritual connection to Mother Earth. *Treaty Six* Hearing (October 1983), Saddle Lake First Nation. (Unpub-lished but presented to the Working Group on Indigenous Populations in Geneva, Switzerland in August 1985. Tapes of the original hearing are available, but in Cree only.)

3 Manual, George, and Michael Posluns, *The Fourth World: An Indian Reality,* (pamphlet), 1974, p 6.

4 *Ibid.,* footnote 2, *Treaty Six Hearings* (1983), and Morris, Alexander, *The Treaties of Canada with the Indians of Manitoba and the Northwest Territories,* Willing and Williamson, Toronto, 1880; p. 169 which refers to a letter dated 13th April 1871, stating that the chiefs were requesting information concerning the intention of the Crown in relation to their lands. "I told them...no application for their lands or hunting grounds, and when anything was required of them, most likely Commissioners would be sent beforehand to treat with them, and that until then they should remain quiet and live at peace with all men."

5 *Indigenous Peoples: A Global Quest for Justice, A report for the Independent Commission on International Humanitarian Issues,* Zed Books, Ltd., London, 1987; the book contains a chapter on Mother Earth. All indigenous peoples around the world have this special relationship to Mother Earth. Dispossession of indigenous peoples from their lands is one of the major problems facing the world today.

6 For a detailed analysis of the Royal Proclamation and its implications refer to Slattery, Brian, *The Land Rights of Indigenous Canadian Peoples as affected by the Crown's Acquisition of Their Territories,* 1979, D. Phil. Thesis (Oxford University), University of Saskatchewan, Native Law Centre, 1979.

7 *Campbell v. Hall,* (1774) Cowp. 204, 98 ER 1045 (K.B.)

8 See the *Western Sahara Case,* International Court of Justice Report, 1975, which laid

to rest the notion of *terra nullius* as it relates to indigenous peoples throughout the world.

9 See Alfredsson, Gudmundur, "Indigenous Populations, Treaties with," 1985, *Encyclopaedia of Public International Law,* Max Planck Institute for Comparative Public Law and International Law, North Holland, 1985, pp. 311-315.

10 Rene Fumoleau, OMI, *As Long as This Land Shall Last: A History of Treaty 8 and Treaty 11, 1870-1939,* McClelland and Stewart, Toronto, 1973, p. 18.

11 *Sanderson v. Heap,* (1909), 11 W.L.R. 238 at p. 240

12 *Ibid.,* p. 240.

13 *R. v. Syliboy,* (1929) 1 D.L.R. 307 (Nova Scotia County Court).

14 *St. Catherine's Milling and Lumber Company v. The Queen,* (1889) 14 App. Cas. 46 (JCPC, aff'g.) (1887) 13 SCR 577 (SCC).

15 *Attorney General of Ontario v. Bear Island Foundation, et al,* (1982) 13 ACWS (2d) 522, no. 1136.

16 *R. v. Sikyea,* (1965) 50 D.L.R. 2d 80 (Supreme Court of Canada).

17 *Ibid,* footnote 2. *Treaty Six Hearings* (1983).

18 *R. v. Secretary of State for Foreign and Commonwealth Affairs, ex parte Indian Association of Alberta and others,* (1982), 2 All E.R. 118 (Court of Appeal). Lord Denning's pronouncements on the continuance of Indian Law.

19 *Special Committee on Indian Self-Government,* House of Commons, Ottawa, 1983, p. 39. This report is known as the *Penner Report,* named after Chairman Keith Penner.

20 For more information on the Indian Acts and their history, see Canada, Department of Indian Affairs and Northern Development, *The Historical Development of the Indian Act,* (Ottawa, 1978), and Venne, Sharon H., *The Indian Acts 1867 to 1974,* Native Law Center, 1978.

21 Venne, Sharon H.,"The Process of Assimilation: A Study of Federal Indian Policy between 1876 and 1896," Thesis: University of Victoria, History Department, 1976.

22 *Cardinal v. R.,* (1981) 1 S.C.R. 508. The Supreme Court of Canada stated that "the ...surrender shall be assented to by a majority of the male members of the band...at a meeting...thereof summoned for that purpose" was interpreted as requiring a

majority of the eligible male members of the band to be present at a meeting called for the purpose of voting on the surrender of lands, and that a majority of those present vote in favour of surrendering the lands. Thus, if only six out of eighty showed up and four voted for the surrender, the surrender would be valid!

23 Pobihushchy, S.I., "A perspective on the Indian Nations of Canada," July 16, 1984, (an unpublished paper with the Department of Political Science, University of New Brunswick, Fredericton, New Brunswick) pages 19 and 20.

24 *Nowegijick v. The Queen*, (1983) 2 C.N.L.R. 89, (SCC).

25 *Queen v. Guerin*, (1983) 1 C.N.L.R. 20, (SCC).

26 See footnote 18.

27 "Commonwealth conventions in relation to Treaties," by James Fawcett for Chiefs of Alberta, 1981. (Unpublished)

28 *Constitution Act*, 1982, section 37(2).

29 Camp He Ho Ha is situated approximately 60 miles from Edmonton, Alberta. The minutes of the meeting are on cassette tape.

30 Copies of the *Treaty Six* chiefs submissions are available from the *Treaty Six* chiefs office in Canada.

31 *Treaty Six* covers an area approximately ten times the size of the Netherlands. There are 131,066 square miles of land in *Treaty Six*..

Appendix

Canadian Policy from 1830 to 1987

How did the policy of "special status" develop? Some relevant dates follow:

1830	British legal opinion that Indians are subject to the colonial criminal law since their treaties do not exempt them from the law.
1858	Colonial (provincial) Indian laws intrude on Indian independence.
1868	Federal Indian Act further diminishes autonomy.
1876	*Treaty Six* signed with the British Crown.

1884 Indian Advancement Act, detribalization and local municipal government imposed.

1931 Statute of Westminster makes Canada an Independent Dominion in the British Commonwealth.

1952 Indian Act amended to make provincial laws apply to Indians.

1954 Until 1954, Indian were not citizens of Canada. In that year Canada adopted its own 'membership code' or 'citizenship law,' and defined persons born in Canada as citizens.

1960 Federal vote given to Indians.

1965 Provincial vote given to Indians.

1969 *Federal White Paper on Termination:* Federal/Indian relationship to be broken up and Indians and their lands subject to provincial jurisdiction.

1971 Core funding policy implemented in addition to Indian Act institutions and structures; results in further fragmentation of First Nations along provincial lines.

Chretien Post-White Paper strategy - termination objective to be done band by band. Tripartite funding arrangements promoted. Devolution via tribal councils and bands.

1978 Constitution Patriation Issue - Indian rights ignored.

1982 Federal Constitutional Concessions: *Penner Report*
Sec. 35 Existing aboriginal and treaty rights affirmed.
Sec. 25 Non-derogation clause: definition of existing rights to be in terms of land claims settlements.
Sec. 37 Constitutional process to define aboriginal and treaty rights.

Constitutional rights to self-government? According to the Department of Justice:

a) Sections 25 and 35 are not defined - "empty box" theory.
b) Therefore, can be defined by legislation.
c) If termination is the outcome of legislation, then that becomes the constitutional meaning of sections 25 and 35.
d) Ottawa's policy to shift bands, one by one, by means of specific legislation to municipal status under eventual provincial legislation and jurisdiction.

1984 National Tribal Council Funding Policy approved.

Cree Naskapi government - province has title, band corporation has fee simple title, band powers delegated and some subject to provincial control.

1985 Alberta Premier at FMC states "self-government...only at a later state...only when we fully understand what self-government actually means." Alberta agrees that treaty Indians remain a federal responsibility and on a separate bilateral process to address treaty issues.

(June) C-31 passed by Parliament.

(October) Neilson Task Force - "Buffalo Jump" document, recommendations:
- budget control and cutbacks
- transfers to bands and provinces
- reserves, urban ghettos
- similar to 1969 White Paper
- strategy, as outlined by Chretien in 1971

(November) Two-Track Policy
- routes to municipal government via specific legislation and comprehensive claims agreements
- constitutional amendment to provide 'clarity and certainty' to termination policy
- once constitution amended, courts cannot overturn

1986 (April) DINA Minister Crombie policy statement on development of community level band government and band-by-band legislation.

(June) Alternative Funding Arrangement (AFA) approved.

Sechelt Local government
(a) Sechelt Lands: underlying provincial title and band corporation has fee simple title
(b) Sechelt Band government is incorporated under federal law, delegated powers.
(c) Sechelt District government, public in form.

1987 (March) Federal amendments proposed to create an aboriginal peoples right of self-government in the constitution. The definition and meaning of this right would be through tripartite agreements, including the provinces. Once an agreement was negotiated, it would be enacted into law by federal and provincial law. Under proposed amendments, Indian self-government is not an existing right. The provinces would have a veto on Indian self-government. Indians rejected the amendments.

Indigenous Rights and Uranium Mining in Northern Saskatchewan

by Jim Harding

The expansion of the uranium industry in Saskatchewan gives policy research and direct action on uranium mining not only a regional but a global significance.[1] Northern Saskatchewan is now the major front-end location of the nuclear system. With our sister province of Manitoba being considered as a nuclear reactor spent fuel storage site, continued cruise testing on the Alberta border and the arming of armed cruise missiles in North Dakota, the Canadian prairie is quickly becoming industrialized and militarized with nuclear technology. Most of the major nuclear powers (U.S., France, West Germany, Japan) and several countries involved in nuclear power and/or interested in obtaining nuclear weapons are now involved with uranium mining in Saskatchewan.[2] With the announced amalgamation of the provincial and federal crown corporations, the Saskatchewan Mining Development Corporation (SMDC) and Eldorado Nuclear, into a single company – which is to be privatized – one company will soon have control of the world's largest source of uranium reserves and one of the largest refining systems.

The reserves of uranium deposits in northern Saskatchewan total nearly 700 million pounds, ranging from .25% to 11.5% uranium oxide.[3] Saskatchewan reserves are over 90% of those in western Canada, including the Northwest Territories. This makes up the largest amount of Canada's production, which is not over 30% of the world market. To the profit or energy hungry these reserves have one meaning. To those who care about the future of the earth, and know the potential of renewable resources and conservation, they represent millions of tons of radioactive tailings which will ultimately disperse into the water, air and food chains. They represent the continual accumulation of nuclear wastes and weapons grade material which comes from the use to which this mined uranium will be put. And, of course, they represent an affront on those who now live in the north or will come to live in the north.

The Exclusion of Indigenous Rights

The Cluff Lake Board of Inquiry (CLBI), held in 1977, is usually held up as the legitimacy for the massive expansion of uranium mining in northern

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The author would like to acknowledge the SSHRC, Human Context of Science and Technology, for assistance doing some of the research used or listed in references in this paper.

Saskatchewan. (The Key Lake Board of Inquiry (KLBI), held in 1980, never purported to question whether uranium mining should, but only how, it should, proceed). It's therefore important to look at its approach to uranium mining and aboriginal rights; and, after ten years, how the conditions surrounding uranium mining stand up to its reasoning and recommendations.

In the CLBI's 300 page report there is only a half-page reference to indigenous (commonly referred to as "Aboriginal") rights:

> Our terms of reference are not sufficiently broad to permit a thorough investigation of that issue and indeed, to have made the issue a part of the present Inquiry would have been a mistake, for, the very nature of the issues dictates that if there is going to be an investigation at all, it should be the subject of a separate investigation.[6]

This exclusion does not stand up to critical examination. With a similar scope both the MacKenzie Valley ("Berger") and Alaska Highway Pipeline inquires investigated aboriginal rights. The former recommended a 10-year moratorium and the latter a 4-year postponement of the pipeline so that indigenous land claims could be addressed.

The Churchill River Inquiry in Saskatchewan also addressed indigenous rights:

> Writing in the Saskatchewan Law Review Bartlett said: The Board is clearly empowered to review and recommend conditions regulating the social and economic impact of the project. Such a review necessarily entails a study of the rights in law of the Indian and native people of Northern Saskatchewan, who represent a significant element in the social and economic structure of the region....the CLBI was remiss, and in error, in construing its terms of reference so as to deny consideration of what Mr. Justice Berger termed "the urgent claims of northern native people." [7]

Indigenous people are actually more than a "significant element...in the region." At the time of the CLBI, indigenous people made up 19,000 of 25,000 northerners. About 10,000 of these people were Metis and non-status Indians and the rest status Indians. If the three mining and northern administrative centers of Uranium City, Creighton and La Ronge are excluded, indigenous people are over 90% of northerners.

Attendance and participation in the CLBI clearly showed that uranium mining was a vital matter to indigenous people. Overall 165 people, or more than half (57%) of all those who attended the 23 Local hearings throughout the province, were from the north. Half of all who spoke were from the north. Of these northerners, 75% in attendance and 71% of the speakers were indigenous people. Most of those who spoke were native men, though native women were better represented than non-native women. Indigenous people were the vast majority in all hearings except the one held in Uranium City, where 60% of those in attendance were non-native, and most were in one way or another associated with the uranium industry.[6]

The Call for a Moratorium

It is not widely known that in the 1970s the Federation of Saskatchewan Indians (FSI) did not participate in the CLBI because the Board refused to address aboriginal rights. The Meadow Lake and Prince Albert District Chiefs of the FSI made their views about land entitlements very clear in an unanimous statement of "why they could not make representation before the CLBI." These northern chiefs said that the "...Inquiry is not dealing with the question of whether or not uranium mining should expand in northern Saskatchewan but simply with the question of how." Therefore:

> ...to participate in an inquiry having such limited terms of reference would mean that Indian people and their government (chiefs and Councils) have already concluded that further uranium development is an acceptable and desirable course of action for the Indian people of northern Saskatchewan. This is not the case.

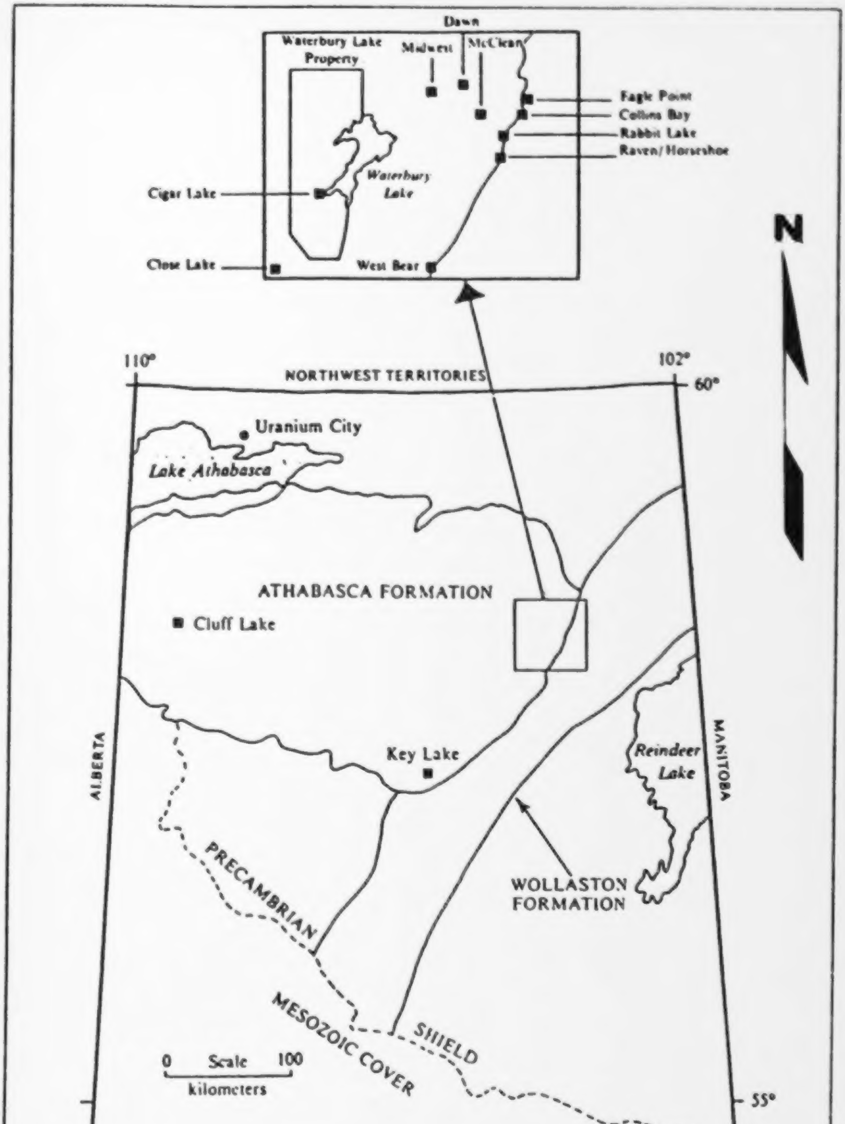
The northern chiefs viewed "the use of Boards of Inquiry with a great deal of suspicion...(because) they create an illusion of objectivity and public participation....We have no desire to lend further support to such an illusion." They added that:

> ...our participation would be impossible given the totally inadequate time-frame of the inquiry and the almost complete absence of resources to investigate the variety of serious issues and questions related to the uranium industry. To enter an arena where the tremendous resources of industry and government are so blatantly stacked against us, would be a politically irresponsible position for us as Indian leaders to take.

There are many of the same reasons why 17 other groups refused to participate in the CLBI formal hearings. After these criticisms the northern chiefs said:

> regardless of our future conclusions about these unresolved questions [about the environmental, social and economic impacts of

Uranium Mining in Northern Saskatchewan


Dawn
Waterbury Lake Property
Midwest
McClean
Eagle Point
Collins Bay
Rabbit Lake
Raven/Horseshoe
Waterbury Lake
Cigar Lake
Close Lake
West Bear
N
110°
102°
NORTHWEST TERRITORIES
60°
Uranium City
Lake Athabasca
ATHABASCA FORMATION
Cluff Lake
Key Lake
ALBERTA
MANITOBA
Reindeer Lake
WOLLASTON FORMATION
PRECAMBRIAN
SHIELD
MESOZOIC COVER
0 Scale 100
kilometers
55°

> further uranium mining on the Indians of Northern Saskatchewan] *no further uranium development is acceptable to Indians* [my emphasis] until:
>
> (a) land selection by Bands with unfulfilled Treaty land entitlement is completed;
>
> (b) the Treaty Rights of Hunting, Fishing, Trapping and Gathering are guaranteed against violation;
>
> (c) the Treaty Rights for health, economic development and resources management are assured; and
>
> (d) we have the time and resources to carefully examine the many serious questions related to the uranium industry.[7]

This stand-firm position by northern chiefs has slipped from political memory. This, in part, may be because the dominant urban and southern leadership of the FSI at the time wished to cash in on uranium mining through such things as trucking and security guard sub-contracts. This strategy has proven more neo-colonial than on promoting self-determination. The Association of Metis and Non-Status Indians of Saskatchewan (AMNSIS) claimed their indigenous rights directly to the CLBI.

> Our people are the aboriginal inhabitants of the Prairie Provinces, and as an aboriginal people we have an aboriginal claim to the land, a claim which is guaranteed in British law in the British Proclamation of 1763, a claim that is reiterated in Canadian law in the British North American Act, a claim that is further reiterated in the laws of Manitoba, Saskatchewan and Alberta in the Canada Lands Transfer Act of 1932. These laws have completely been ignored by successive federal and provincial governments. We have been driven from our land in contravention not only of our laws as an independent nation state but in contravention of the laws of Great Britain, Canada and Saskatchewan. In short, our land has been stolen. This is an incontestable fact.[8]

After outlining the severe social and economic problems of indigenous people who have been denied their aboriginal rights, the AMNSIS spokesman concluded that "it is only just that it be our people who determine whether or not this development be allowed to proceed."[9] There was little doubt about how AMNSIS viewed the proposed uranium mine:

> The proposed uranium development at Cluff Lake represents only one of hundreds of corporate and government decisions to commit

> robbery, theft, and even genocide against our people. If their comments seem harsh, you know, I think we could substantiate a lot of what we are saying today.[10]

The cross-examination of AMNSIS' spokesperson by the company's lawyer showed no understanding and complete hostility for the aboriginal rights of indigenous people. He sidetracked the issue into a challenge to this and other AMNSIS witnesses to prove they were legitimate northerners. When their native and northern roots were shown, he then commented, "Well, I consider myself a northerner too, but I didn't come from quite that far north," at which point Judge Bayda who presided over the CLBI commented, "It was Marcelin, wasn't it?"[11] The position of AMNSIS was reiterated by its president after the CLBI (Bayda) report was released.

> AMNSIS is not surprised by the results of the Bayda Inquiry - the decision to develop uranium in the Cluff Lake area was made long before the inquiry started...the more important issue that must be settled before Native people can be freed from government dependency and control.

Furthermore, AMNSIS could not support the Northern Development Board (NDB) proposed by the CLBI unless it:

> ...had the authority and resources to deal with the...protection of native rights. If...Department of Northern Saskatchewan officials hold true to their past track record, the Northern Development Board will be a useless and powerless board established simply to appease the provincial government and southern non-Natives. It would simply give the appearance that Natives have a say in the development of Northern Saskatchewan, when in reality they do not.[12]

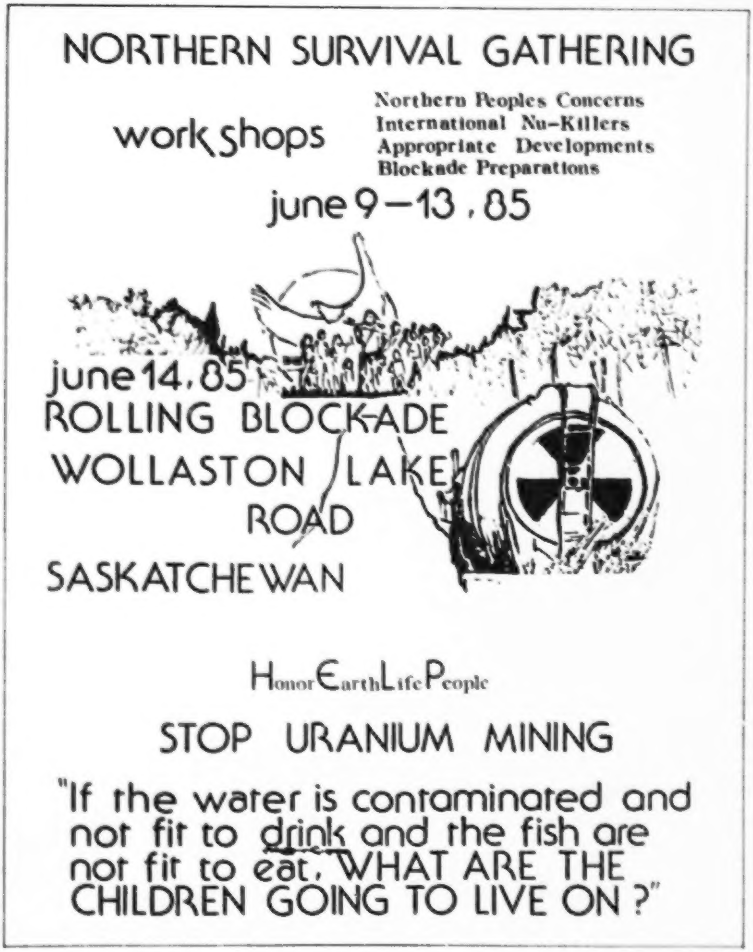
Metis and non-status Indians were clearly more vulnerable regarding just land entitlement than band Indians. For the uranium mining industry to expand before the Metis and non-status Indians had the opportunity to establish their legal claim to land further jeopardized their long struggle for self-determination. The unwillingness of the government and the CLBI to deal directly with aboriginal rights, even though these will be directly affected by uranium mining, indicates how they had once again been bargaining over land claims in bad faith.

There is a point at which this bargaining in bad faith comes very close to acting outside the law. A federal cabinet memorandum shows the government of Canada considered the right of Metis and non-status Indians to make land claims to be legitimate.[13] The document acknowledges the need of Metis and non-status Indians for "self-determination." It states that "...the non-status Indians and Metis may have legal claims against the federal government and some provinces and this might be tested in the courts at any time." Later the document explicitly accepts "...the prima facie evidence that there exists a class of indigenous people outside the Indian Act that may have justifiable claims to 'aboriginal title'...." The document states "as a government 'objective'...to settle outstanding valid claims, based on aboriginal title, by negotiation, taking full account of indigenous requirements in terms of land and ecology to sustain a traditional lifestyle...." In one place it recommends "that the government agree to provide funding, on a mutually acceptable basis, to non-status Indian and Metis organizations at once to research legal claims...." And that "there is an urgent need for action, especially in relation to the funding of research into legal claims."

The cabinet document was in part politically motivated, suggesting, as it did, the government "...take a low-key approach in public to avoid a native backlash like that against the 1969 policy paper," and that government should "continue to work through, and foster the native associations and their moderate leadership." In particular, it stressed the need to give the "...indigenous socio-economic problems in Western Cities (and Western Northlands) and in various rural areas...urgent attention to forestall social unrest." But it did indicate that the claims of Metis and non-status Indians, as well as band Indians, to aboriginal rights were legitimate.

The commitment to aboriginal rights is so common that even northern organizations that are somewhat integrated into the political and administrative structure of the dominant society affirm them. In its submission to the first phase of the CLBI, the Northern Municipal Council (NMC) also stressed the priority of aboriginal land rights. In addition to declaring their aboriginal land rights as non-treaty northern indigenous people, the NMC also indicated its solidarity with the land rights of the treatied Indians of northern Saskatchewan.

Since aboriginal rights were ruled out by the CLBI, indigenous people were faced with a "take it or nothing" dilemma regarding uranium mining. All interest groups including the CLBI pushed their own interpretation of how "northerners" actually ended up viewing uranium mining. A 3-year research project involving sampling, coding and analysis of inquiry participants' attitudes and viewpoints surely provides a more objective picture.[14] None of the indigenous participants (in the sample) expressed either unconditional or conditional support for the uranium mine. Half of them expressed support for a moratorium, which shows widespread grassroots endorsement for the



NORTHERN SURVIVAL GATHERING

workshops

Northern Peoples Concerns
International Nu-Killers
Appropriate Developments
Blockade Preparations

june 9–13, 85

june 14, 85
ROLLING BLOCKADE
WOLLASTON LAKE
ROAD
SASKATCHEWAN

HonorEarthLifePeople

STOP URANIUM MINING

"If the water is contaminated and not fit to drink and the fish are not fit to eat, WHAT ARE THE CHILDREN GOING TO LIVE ON ?"

Anti-uranium mobilization poster distributed by Group for Survival, a Saskatoon-based indigenous rights organization.

official position taken by all indigenous organizations. About 25% were outright opposed to the uranium mine and another 25% were neutral. An interesting and ironic finding was that 83% of the northern proponents of uranium mining were from Uranium City, which has since become depopulated due to the shut down of the nearby uranium mines.

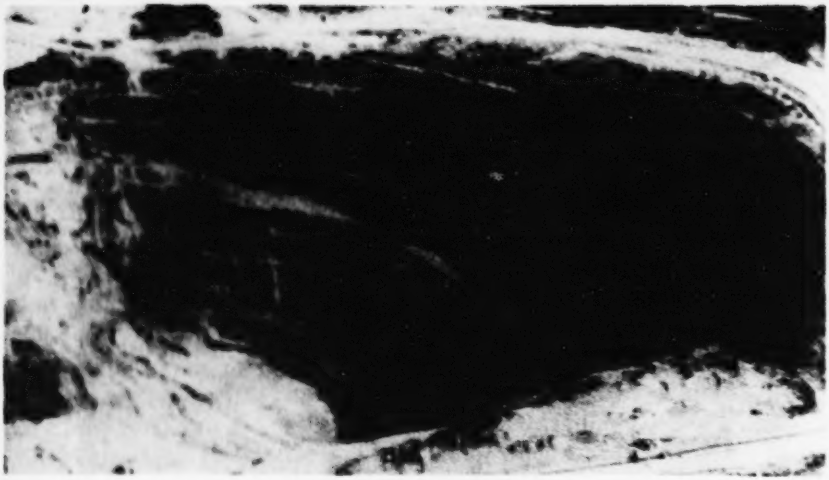
There are many critiques of the way the CLBI evaded aboriginal rights. The United Church of Canada took issue with the CLBI's narrow notion of northerners controlling their lives.

> A northern development Board to administer projects largely of the *fait d'accompli* type does nothing to answer the longing of the people. It merely institutionalizes the oppression evident in the planning process located far from the people. While it does provide for an opportunity for more justice in the area of the distribution of the royalties, it does not address the question of basic *control* of the productive development that leads to these royalties, control of te technology and the land to which these operations of mining are taking place. [15]

The United Church also argued that basic control would mean regaining "the lost community control given up in the last century." Otherwise under the present situation, a NDB would fail to begin to redress the historical injustice. The Canadian Constitution now recognizes and affirms aboriginal rights. However, in the night of the knives and horse-trading that led to the final Charter of Rights, aboriginal rights were clearly one of the federal-provincial political footballs. The use of the phrase *"rights that now exist* by way of land claim's agreements" is clearly more determinant than the add-on "or may be so acquired." The onus is still on native people and their allies to win their indigenous rights.

Furthermore, all of this is in the realm of formal rights and formal justice. Achieving substantive justice is always more complex and difficult. The coincidence of the 1973 federal policy on native claims and the OPEC-triggered energy crisis and the consequent pressure for more resource exploitation vividly makes the contrast. In spite of formal commitments to settle land claims, aboriginal rights have consistently been traded off by governments working more for the interests of the resource industry than indigenous people. The case of the Lubicon Band in Alberta, which received international attention during the build-up to Calgary's Winter Olympics, is typical. Governments have consistently tried to sidestep aboriginal rights to get mineral wealth. A communique to the Minister of the Interior in 1897 about the advantage of pressing ahead on *Treaty Eight* with the Indians stated:

> They will be more easily dealt with now than they would be when their country is overrun with prospectors and valuable mines to be discovered. They would then place a higher value on their rights



Aerial view of the open pit uranium mine at Cluff Lake in 1985 (Photo: *Lillebror*)

> than they would before these discoveries are made and if they are like some of the Indians of Saskatchewan, they may object to prospectors going into that country until their rights are settled.[16]

Commenting on an amendment to the Indian Act which provided for surface leases for mining on reserve land the *1920 Annual Report of the Department of Indian Affairs* noted:

> ...owing to local conditions, misapprehension or hostility, it is not always possible to receive a surrender for mining rights. This obstacle has been effectively overcome by the amendment.[17]

Indian reserves were even located in such a way that mineral rights were unknowingly being "extinguished." In 1925 The Saskatchewan premier wrote:

> If mineralized sections are kept out of Indian Reserves, as far as possible, there is a chance for their development in the future. The placing of them within the borders of the Reserves would hamper development very materially.[18]

This colonial strategy has persisted to the present. The Peter Ballantyne and Lac La Ronge Bands reported to the 1976 Churchill River Inquiry (Aski-puko) that mining companies had taken "2 billion in wealth from the area with no significant benefit for the North or northern natives."[19] Allan Blakeney, who was Premier from 1971-1982 when the push was on for uranium mining, maintained the same colonial stance when he stated that permits to explore for uranium on Crown lands mean these lands were "occupied" and not available for any agreements on land entitlement.[20] The treaties, federal-provincial agreements, and several judgements on aboriginal rights all would contradict this edict that uranium exploration constitutes occupation.

It is understandable why the call for a moratorium on uranium mining was so widespread in view of the blatant infringement of aboriginal rights from uranium mining. Rather than open up this colonial nest of worms, the deliberations were narrowed to the matter of "incidental economic benefits." The CLBI spent most of its chapter on "The North" discussing ways to share the short-term benefits from uranium mining with northerners.

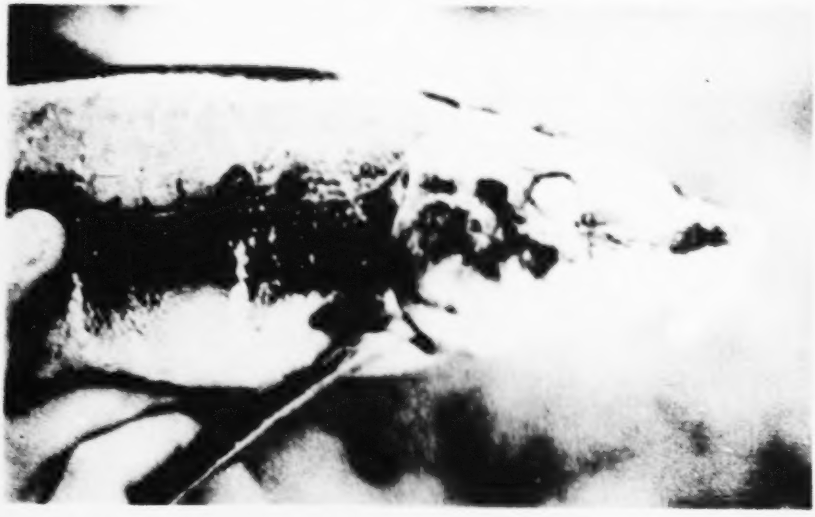
The exclusion of indigenous people from even the short-term benefits of mining has a long history in the north. Though a hydro dam was built at Island Falls in 1930 to supply power to mines at Flin Flon, the adjacent native town of Sandy Bay never received electricity until 1958. Indigenous people working for Churchill Power were segregated into separate toilets and lunch rooms and the lowest paying labour and maintenance jobs, with no certification. The housing, goods and services in the newly constructed Island Fall company town contrasted sharply with conditions in Sandy Bay, where native workers returned. When the dam was automated in 1967 the economic base of Sandy Bay disappeared.

Information provided to the Churchill River Board of Inquiry indicates that in the early 1970s only 2% of the jobs in seven mines in northern Saskatchewan and Manitoba were filled with indigenous people. Figures from Eldorado Nuclear in 1979 indicated only 7% of the jobs at Uranium City were filled with natives. Various governments have initiated programs to supposedly try to alleviate the massive unemployment in the north. The 1978 Northlands Agreement between the federal and provincial government was:

> ...to encourage the development of the natural resources of the area in harmony with resource conservation, for the benefits of northern resident and resident of the province; and to provide the opportunity for northern residents, who wish to do so, to continue their own way of life within an improved social and physical environment.[21]

In mid-February 1978 the now defunct Institute for Northern Saskatchewan at the University for Saskatchewan sponsored a conference to "examine the experience of corporations, employees and northern communities with a commuting labour force." Representatives came from Amok, Uranerz, Gulf, Esso, Eldorado and the SMDC. Spokespeople from indigenous and labour groups were noticeably missing from the agenda. A full afternoon discussed the non-unionized Gulf-owned mine at Collins Bay, which had established the commuter system. (This session was chaired by a past member of the supposedly neutral CLBI). The other uranium companies were clearly interested in learning about the advantages to them of a non-union shop, with a no return policy and an apparently low turn-over rate. Upon questioning, the vice president for production at Collins Bay admitted that only 10% of the 300 on staff were northerners.

At the conference, the Minister of Northern Saskatchewan outlined the provincial government's policy regarding the involvement of northerners in uranium mining. It was his hope that the road construction work to the Cluff and Key Lakemine would train northern residents for future commuting jobs at the mine and mills. It was also hoped local businesses would get subcontracts. The quota of 50% northerners in the surface lease for Phase I of the Cluff Lake mine was noted as the proof of the success of the province's policy. He reiterated the government's opposition to direct royalty sharing as advocated by the CLBI, instead favoring the expansion of northern local government.



A blind and deformed sucker (*Catostomida* spp.) taken from the area immediately downstream from the Cluff Lake uranium mine during the early '80s. Such genetic deformities have been increasingly observed not only among aquatic life but among regional mammals such as moose since 1970. (Photo: *Lillebror*)

The Northern Chiefs' Study

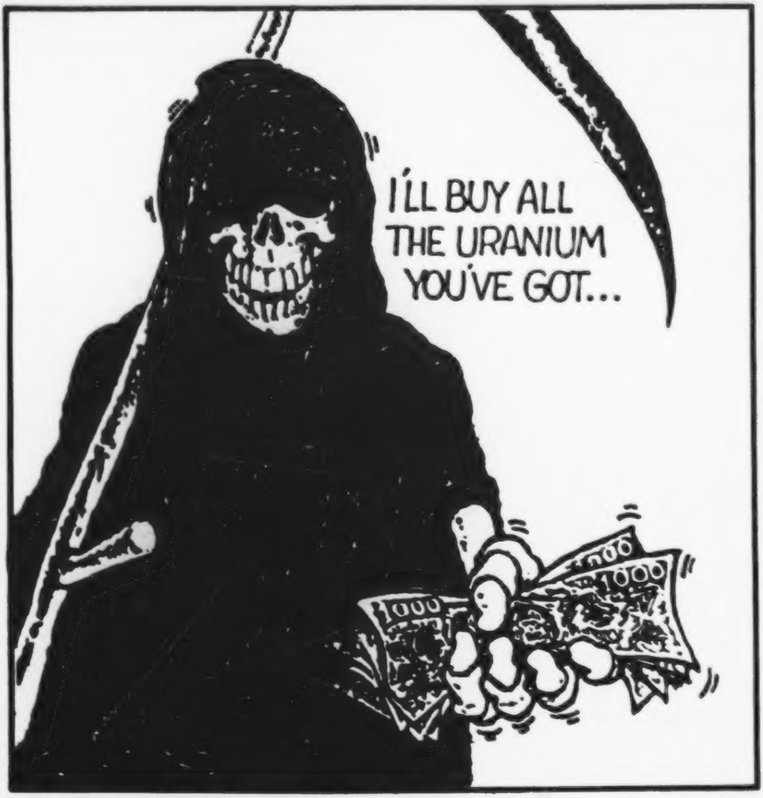
The key policies and events in the promised "sharing" of economic benefits with northerners were: i) the establishment of the Cluff Lake Surface Lease, and Monitoring Committee in 1978; ii) the establishment of the Manpower Secretariat in 1979; iii) the Key Lake Uranium Mine Surface Lease in 1981; iv) and the revised Cluff Lake Surface Lease and the Eldorado Collins Bay Surface Lease in 1983. There are, however, many indications of growing disenchantment with the industry as shown from the report of the Prince Albert District chiefs:

> Although the original agreements all contained similar socio-economic goals it is apparent that the most recent surface lease agreements contain practically no enforceable provisions with regard to employment, training and monitoring conditions. Written requests were made by the authors to Amok Ltd., Key Lake Mining Corporation and Eldor Resource Ltd., for pertinent employment statistics and yearly employment plans and assessments as outlined in the terms of the surface lease agreements. Replies from Amok Ltd., indicated that the information requested should be accessed through the appropriate provincial departments. As mentioned earlier...written requests have been made to the province, [but] unfortunately no response has been received. In various attempts to acquire this information from the province, the authors were assured that the information would be compiled. Although, in final attempts to follow up these commitments we were informed that the release of such documentation would have to be approved by the independent mining companies. Written responses from both the Key Lake Mining Company and Eldor Resources Ltd., indicate that information will be forthcoming. To date no further response [at all] has been received.[22]

Furthermore, the report notes that both the monitoring committees and manpower secretariat ceased to operate under the new neo-conservative provincial government elected in 1982. The only statistics the chiefs were able to get from the Cluff Lake mine for 1979-84. On the basis of 1984 figures the report concluded the project:

> ...has achieved positive results in reaching a recorded total of 44% northern employment which includes on-site mining operations and the sourthern based office in Saskatoon.[23]

The company's 1983 figures show 46% northerners. This, of course, begs the


I'LL BUY ALL THE URANIUM YOU'VE GOT...
1000
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important question about how these jobs were actually distributed to indigenous and non-native residents in the north, and what kinds of jobs each group got. Company figures for 1982 indicate that only 14 of 143 jobs going to northerners were for the higher paying and/or safer jobs in supervision, technical or clerical work. The rest (129) were listed as "other," which includes most of the labouring and more dangerous mine and mill jobs. Furthermore the company's own figures show that between 1979 and 1982, 311 of 408 or 76% of the northerners hired were terminated. This suggests that the northern "labour pool" for the mine is highly transient, perhaps an indication of the occupational and environmental conditions at the mine. Furthermore, the companies' own figures show that the percentage of northerners hired who were terminated was high (from 68-85%) in all the indigenous communities (La Lache, Buffalo Narrows, Beauval, Ile a la Crosse, Patuanak, Cano Narrows and others) which have served as the native labour pool. These figures certainly don't leave the impression that the much applauded commuter system adapted from the Rabbit Lake mine had made uranium mining more compatible with the northern "lifestyle" than past company towns. Finally, the company's own figures show a declining rate of northerners from 56 to 47% over the years 1979-1982. With the abolition of the monitoring committee in 1982, and a less stringent surface lease for Phase II of the Cluff Lake mine, this trend has continued.

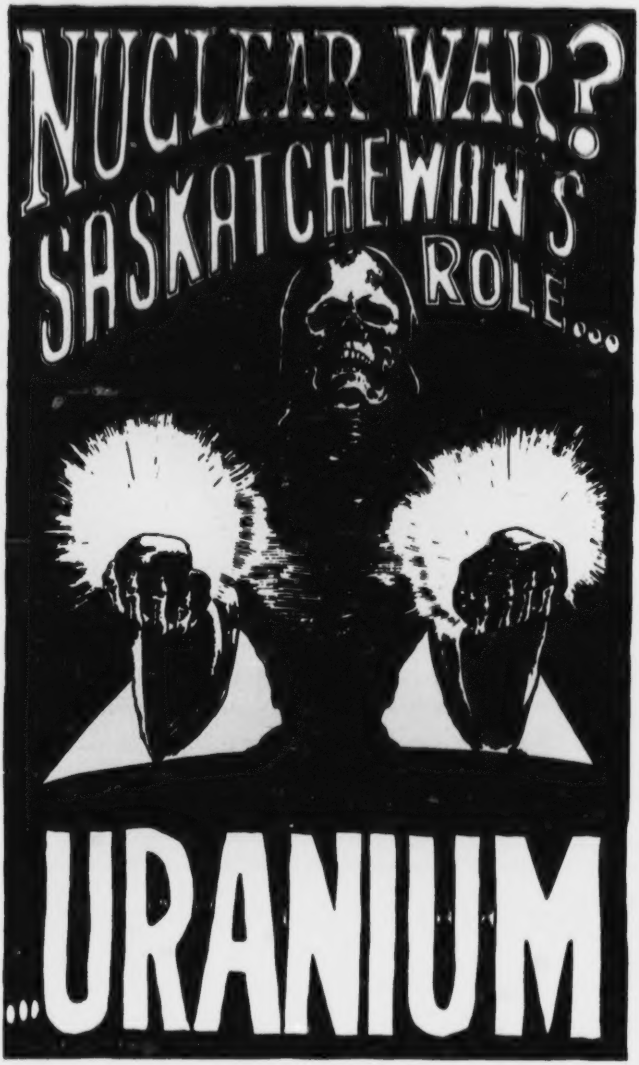
The chief's report refers to an evaluation done by a former cabinet minister who was also past Deputy Minister of Northern Saskatchewan.[24] It points out that only 3% of total construction activity at the Cluff Lake mine went to northern contractors. It noted the 1983 Surface Lease for Eldorado's Collins Bay mine, showed a decline in the work going to northerners. Furthermore, it concluded that the now defunct monitoring committee had failed to act as an effective watch-dog on the company and government. In the author's words "there is no doubt about the facts, the number of people benefiting directly is very small." The report paraphrases the evaluation by writing that" the impact cost of uranium development on northerners may well exceed any benefit."[25]

A parallel disillusionment to that expressed by the chiefs was found in a follow-up interview study of participants in the uranium inquires.[26] This study, conducted from 6-9 years after the uranium inquiries, was able to locate 183 and contact 134 of the 315 in the sample taken of participants from these inquiries, and to do intensive interviews (or get questionnaires) for 106 of these people. The follow-up participants were spread fairly evenly between proponents, opponents and those favoring a moratorium or expressing neutrality on uranium mining.

Overall there was a 39% increase in opposition to uranium mining since the time of the inquiries. The increasing support was only 5%. These shifts primarily reflect decreasing support for a moratorium or neutrality. This was most marked in the case of indigenous people affiliated with indigenous organizations where opposition went from 0% at the time of the inquiries to 50%. This resulted from a shift from support for a moratorium at the time of the inquiries. An analysis of themes associated with those past and present attitudes suggests major disillusionment with the realities of uranium mining and with the uranium inquiries.

Assessing Benefits and Burdens

There is a more accurate and helpful way to assess the economic benefits of uranium mining to northern indigenous people and that is by looking at the


NUCLEAR WAR?
SASKATCHEWAN'S
ROLE...
...URANIUM

value of uranium production, the costs of exploration and "development," and the wages, revenues, and taxes since the expansion began when the Rabbit Lake mine opened in 1975.[27] The total value of uranium to 1984 was over two billion dollars. The total cost of exploration and mine site "development" was about $650 million, more than half of it expended by the government through its joint ventures. The wages and salaries coming from uranium exploration during this period, most of which did not go to northerners, especially indigenous northerners, totalled $140 million. The value of wages and salaries coming from mine, mill and other work related to uranium production, again most of which did not go to northerners, especially indigenous northerners, totalled $290 million. Finally, the total received from taxes and royalties during this period was $128 million. The returns through taxes and royalties as a percentage of the value of the sales is shown in graphs. The percentage increases slightly after the uranium inquiries but appears to have peaked prior to the new neo-conservative government taking power.

Exploration, construction and production costs, including wages and salaries, were only 53% of the value of the uranium. If taxes and royalties are added in, the costs were 59% of the value of the uranium. Even more revealing about how the economic benefits (which are the mainstay of the pro-uranium argument) are actually distributed is the number of jobs going to indigenous northerners. The first thing to note is that in 1984, even with the new high grade mine at Cluff and Key Lake in operation, the total direct employment was not as high (1204 jobs) as it was in 1982, prior to this expansion, when the Uranium City mines were still open (1384 jobs). Furthermore, after the shutdown of the Uranium City mine (1982-1983) direct employment dropped below that existing in the years 1975 and 1976, before the so-called uranium boom. The emphasis and exaggeration of the incidental economic benefits by proponents is apparent. The suppliers of technology and capital, not labour and northerners are those who are benefiting from uranium mining.

There is no disputing that there has been an increase of the proportion of these few production jobs going to northerners after the inquiries. But even assuming that half of these northern jobs went to indigenous people, we are still only talking of 212 jobs in 1984. This was 18% of all direct jobs, and perhaps 10% of the wages and salaries due to the job stratification. Considering the 2 billion in sales in this period and the fact that indigenous people are nearly 80% of northerners, this hardly seems like sharing the benefits or increasing self-determination.

Even putting the public figures of the Saskatchewan Mining Association (SMA) into their broader context does not speak well for uranium mining.[11] The SMA plays statistical manipulation by saying that "...23% of the employment of the active labour force in Northern Saskatchewan..." is in uranium mining. It adds "...the majority of whom are of Indian ancestry." It also mentions that 30% of the annual salaries of the mines go to northerners. The fact that the vast majority of the northern indigenous people are *not* in"...the active labour force..." is not mentioned. Nor does it mention how little of this goes to the people of Indian ancestry who we saw have the least safe and lowest paid jobs. It also chronicles the growing dependence of northern trucking and other service contracts on uranium mining as though this is a good thing. Without knowing it, it indicates that little capital is left for other sectors by noting the capital expenditures on uranium between 1981-84 "...was the major component of non-government capital investment in Saskatchewan."

With its hidden message about free trade, it concentrates on the total sales from Saskatchewan and Canada and the importance of this to our trade balance. It does not talk about how little of this stays north, let alone in the province. One of the reasons there has been a corporate "boom" in the uranium industry in northern Saskatchewan was because the fundamental issues of aboriginal rights and land claims were not addressed in the public inquiries. The CLBI not only concurred with the government when it refused to declare a moratorium on uranium mining but refused to include aboriginal rights in its own terms of reference. This meant the push to expand could be unimpeded once it was legitimized through the public participation process. In analyzing trends in "The World Uranium Industry" Owen wrote:

> ...Australian production was "frozen" pending the outcome of the Ranger Uranium Inquiry and the negotiation with the Northern Land Council. The native "land-rights", proliferation, and environmental issues which delayed the development of the fledgling Australian uranium industry during the mid-1970s only affected new Canadian development and, even then, they were resolved more expeditiously than in Australia.[29]

It is clear from this that the author knows no more about the specifics or context of the CLBI than most writers in Canada do about the *Ranger Report* in Australia. As we have seen it would have been more accurate to say in the case of Saskatchewan that these issues – particularly indigenous land rights – weren't even squarely faced, let alone being resolved. In likely the best single, comprehensive analysis of the impact of uranium mining on aboriginal peoples in Australia, Tatz of the Aboriginal Research Centre concluded:

> Why should Aborigines work in the mining industry? To what end and purpose should they work, with what benefits and to whom? Mining is seen as the magical solution to all the Northern Territories' problems: yet there is no logical reason why Aboriginal employment in uranium mines should or could cure the general high

> level of Aboriginal unemployment. (And when mining fails to provide 'deliverance,' it is certain the next saving grace will be tourism, as predicted by the Mines Minister for Tenant). My argument is that Aboriginal employment in mining is influenced more, if not solely, by government need to justify an intrusive industry, a value shared by many companies who don't really want or need to employ them. Such employment has little to do with motives about *improving* Aborigines for their sakes: but improving them for our sakes - yes.[30]

After looking at the by-passing of aboriginal rights, the failure to create the liberal version of fair compensation and control, the pittance of economic benefits, and the massive existing or potential social and environmental effects, the same can be said of northern Saskatchewan. In northern Saskatchewan - in spite of steadily shrinking evidence - the industry and government persist with their false promises about jobs, training and participation. The motivation is clear. It is not – now under neo-conservatism, nor before under social democracy – based on a commitment to self-determination in the north, let alone the south. It is exploitation and oppression through both economic coercion and manufactured political consent.[31]

With the struggle emerging across Canada about the hidden agenda of continentalism in the free trade deal, more Canadians may be able to come to understand the predicaments about development facing indigenous people living under the bribe of uranium mining. The general lesson from this particular analysis is that for sustainable and appropriate development to be obtained, political alliances which are committed and capable of achieving these must first be achieved. With the growing awareness of the risks and failings of uranium mining, Saskatchewan is closer to this potential than it was a decade ago.

End Notes

1 For a fuller discussion of this see Harding, J. ,"Saskatchewan: The Eye of the Uranium Controversy," *Briarpatch*, April 1985, p. 10-11.

2 See McKay, P. , "Adding Fuel to the Fire: Saskatchewan Uranium Enriches Warheads and the Corporate Pockets of Free-Trade Supporters," *This Magazine*, Volume 21, No. 8, February 1988, p. 24-30.

3 These figures come from Thompson, F. , the M.L.A. for Athabasca in his brief "A Report on the Saskatchewan Uranium Industry," given to the Federal NDP Hearing on Nuclear Energy, Saskatoon, February 9, 1988. For additional informa-

tion also see Goldstick, Miles, *Voices From Wallaston Lake: Resistance Against Uranium Mining and Genocide in Northern Saskatchewan*, Earth Embassy and WISE, 1987.

4 CLBI, *Final Report*, p. 204.

5 Bartlett, R.H., "Indian and Native Rights in Uranium Development in Northern Saskatchewan," in *Saskatchewan Law Review*, Volume 45, No. 1, 1981, pp. 14-15.

6 Harding, Jim, "Content Analysis of Northern and Southern Saskatchewan Views of the Cluff Lake Uranium Mine," presented to North American Regional Conference of the International Association for Impact Assessment, Calgary, September 18-20, 1985.

7 *Statement*, Meadow Lake and Prince Albert District Chiefs, October 7, 1977.

8 CLBI, *Transcripts*, Volume 57, p. 5741.

9 CLBI, *Transcripts*, Volume 57, p. 5744.

10 CLBI, *Transcripts*, Volume 57, p. 5740.

11 CLBI, *Transcripts*, Volume 57, p. 5746.

12 See *New Breed*, July 1978, p. 7.

13 The following quotes are from *Native Policy: A Review With Recommendations*, May 27, 1976, p. 1, 5, 3, 2, 2, 1-2.

14 Harding, Jim, "Content Analysis of Northern and Southern Saskatchewan Views of the Cluff Lake Uranium Mine," Presented to North American Regional Conference of the International Association for Impact Assessment, Calgary, September 18-20, 1985.

15 *Critique of Chapter VIII of "The North"*, The United Church of Saskatchewan, undated, p. 1. Also see Harding, Jim, "Development, Underdevelopment and Alcohol Disabilities in Northern Saskatchewan," *Alternatives*, 7:4, Autumn 1978, p. 30-39.

16 *Ibid.*, p. 36.

17 *Ibid.*, p. 31.

18 Bartlett, *op. cit.*, p. 25.

19 *Ibid.*

20 *Ibid.*, p. 26.

21 *Ibid.*, p. 41.

22 *Studies of the Uranium Industry,* Office of the Prince Albert District Chiefs, April 1985, p. 137-138.

23 *Ibid.*, p. 140.

24 McArthur, D., "Surface Leases and Socio-Economic Considerations with Respect to Ura-nium Mining." Mining Law Institute, June 1983.

25 *Study of the Uranium Industry, op. cit.*, p. 198.

26 Harding, J., B. Forgay and M. Harper, "Ten Years After," Prairie Justice Research, University of Regina, October 1987.

27 Thompson, *op. cit.*

28 Nightingale, J.A., "Brief to the Federal NDP Inquiry into the Nuclear Fuel Cycle in Canada," Saskatchewan Mining Association, Uranium Section, Saskatoon, February 9, 1988.

29 Owen, A.D., "The World Uranium Industry." *Raw Materials Report,* Volume 2, No. , p. 12.

30 Tatz, C., *Aborigines & Uranium & Other Essays,* Heinemann Educational Publishers, Victoria, Australia, 1982, p. 174.

31 Havemann, P., "Law, State and Indigenous People: Pacification by Coercion and Consent," in Reason, C.E., *et al.* (eds.), *Law and Society: A Structuralist Perspective,* Academic Press, Toronto (forthcoming).

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The Water Plot
Hydrological Rape in Northern Canada

by the Dam the Dams Campaign and
the Institute for Natural Progress

There are strange things done in the midnight sun
By the men who moil for gold;
The Arctic Trails have their secret tales
That would make your blood run cold...

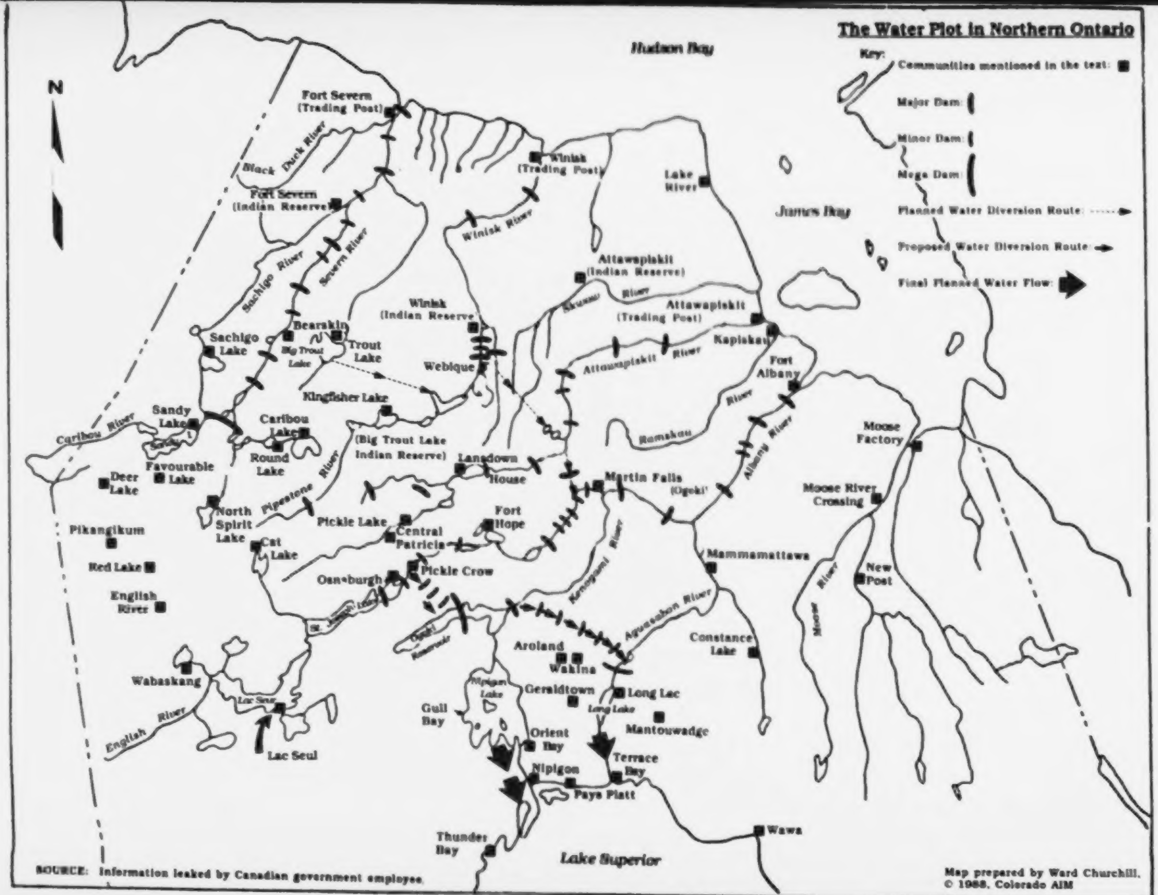
- Robert Service

In northern Canada, a water diversion scheme far larger than the James Bay Project[1] has been planned and awaits only the right climate of public opinion to be put in operation. Should Canada's hydroelectricity and clean, fresh waters be diverted southward to supply the growing demand of the United States? According to those who propose such ideas, Canada would earn a great deal of foreign exchange thereby, and would benefit considerably from the employment created by construction of the required dams, dikes, canals, tunnels and pumping stations. So far, so good, but what happens once these works are built? This paper attempts to answer the question as far as possible in terms of specific events which have already occurred, and to demonstrate that what little benefit might actually accrue to the inhabitants of the Canadian north will be vastly outweighed by the costs of adverse human and environmental consequences.

In northwestern Canada, the indigenous Athabascan, Cree and Anishinabe populations live primarily by the time-honored expedients of hunting, trapping and fishing. Those who hold wage-jobs do so in mainly in the three industries which support the resident non-Indian population: mining, forestry and tourism. Each of these economies must be considered in any assessment of the predictable impacts of the hydrological rape of northern Canada.

The traditional indigenous economy: As the development of the James Bay Hydroelectric Project in Quebec and northeastern Ontario has amply shown over the past 15 years, massive water diversion is simply devastating to the ecosystems upon which traditional indigenous economies depend. The habitat of fur-bearing animals, without which there can be no trapping, is flooded out when free-flowing waters are dammed. Similarly, much of the bottom lands upon which large mammals must graze are submerged, killing or driving the animals away and destroying the basis for commercial and even subsistence hunting. Perhaps ironically, aquatic life is no less disrupted by damming than is that of land-based animals. For instance, many of the varieties of fish natural to northern Canada require a current in which to thrive; they disappear steadily once their rivers and streams have been converted into relatively motionless reservoirs. The flooding caused by dams also tends to bring on mercury contamination and other forms of toxic water pollution which renders even those types of fish which are able to adapt largely useless for subsistence. In sum, it may be anticipated that if the grand plan for water diversion in the Canadian north is consummated, the impact upon indigenous peoples there will be catastrophic; it is certain to destroy their present economic self-sufficiency and may well lead to their disappearance as peoples. In this sense, the effect of "the water plot" carries implications of genocide.[2]

Forestry: Although northern Canada is abundantly wooded, it takes more dollars worth of equipment to generate a penny's worth of profit from the pulp and paper industry than nearly any other business in the world. Because regional trees grow rather slowly, each paper mill must draw on a very broad forest area in order to ensure that the large and immobile capital investment involved continues to receive a perpetual supply of raw materials. In northwestern Ontario, for example, timber limits are now almost fully allocated throughout the bulk of the "harvesting" area (*i.e.:* south of Highway 11 and southeast of Lake Nipigon); reservoirs already cover tens of thousands of square miles of former woodlands north and northwest of this line, and it is easy to understand that further expansion of hydrological "improvements" can only be accommodated through destabilization of the forestry industry. If the water plot were to achieve full fruition, forests and forestry not only in Ontario, but elsewhere in the north, will become effectively things of the past. As concerns the indigenous people of the region, the effect would be to deny them a primary source of the limited cash economics in which they now engage. Tangibly, their



N
Hudson Bay
James Bay
Lake Superior
Key:
Communities mentioned in the text: ■
Major Dam:
Minor Dam:
Mega Dam:
Planned Water Diversion Route:
Proposed Water Diversion Route:
Final Planned Water Flow:
Fort Severn (Trading Post)
Black Duck River
Fort Severn (Indian Reserve)
Winisk (Trading Post)
Winisk River
Lake River
Sachigo River
Severn River
Attawapiskit (Indian Reserve)
Ekwan River
Attawapiskit (Trading Post)
Kapiskau
Attawapiskit River
Winisk (Indian Reserve)
Bearskin
Big Trout Lake
Trout Lake
Sachigo Lake
Webique
Fort Albany
Kingfisher Lake
Ramskau River
Albany River
Moose Factory
Caribou River
Sandy Lake
Caribou Lake
Round Lake
(Big Trout Lake Indian Reserve)
Lansdown House
Martin Falls (Ogoki)
Deer Lake
Favourable Lake
Pipestone River
Moose River Crossing
North Spirit Lake
Pickle Lake
Fort Hope
Pikangikum
Central Patricia
Cat Lake
Mammamattawa
Red Lake
Osnaburgh
Pickle Crow
Kenogami River
New Post
Moose River
English River
St. Joseph Lake
Ogoki Reservoir
Aguasabon River
Constance Lake
Aroland
Wakina
Wabaskang
Nipigon Lake
Geraldtown
Long Lac
Long Lake
Gull Bay
Lac Seul
Mantouwadge
Orient Bay
English River
Lac Seul
Terrace Bay
Nipigon
Paya Platt
Wawa
Thunder Bay

The Water Plot in Northern Ontario

SOURCE: Information leaked by Canadian government employee.

Map prepared by Ward Churchill.
© 1988, Colorado AIM

options for survival *in situ* would be correspondingly reduced.

Mining: There is estimated to be approximately $1 billion in nickle in the new INCO mine on Shebandowan Lake, and the entrance to the shaft is barely 20 feet above lake level. In the gold-producing areas of Red Lake and Pickle Lake, many other mines are similarly situated or located on small islands. Projected areas of flooding if the water plot is carried through show that these and others such as the mine at Pickle Crow will simply disappear beneath the waves, as will a number of communities such as Central Patricia. Planners explain that the construction of an elaborate complex of cofferdams, causeways and pumping facilities will be sufficient to save many existing mine-sites. They are silent, however, concerning the expense this will entail, and the amount which it will be necessary to add to the cost of Canadian ores in order to pay for it. In all likelihood, the result will be that mining in much of northern Canada will be priced "out of the market," and thereby gutted. Further, the planners have little to say about how anyone is to locate and begin to mine as yet undiscovered mineral deposits buried not tens, but *hundreds* of feet under water. Once again, one of the very few cash economy options available to the indigenous people of the area is to be foreclosed.

Tourism: This is the third and perhaps final basis for cash economy in the northlands. Over the past 40 or more years, a solid business in sport fishing and hunting, camping and the like has been developed and provides a cash supplement to the subsistence activities of many indigenous people. This stands to be utterly ruined when fast-moving pike streams as well as pickerel lakes are converted into a huge, virtually stagnant inland sea in which only carp can live, and upon which one can barely cast a line without snagging the rotting remains of once-proud pine forests. Even where water still flows, navigation – as is abundantly shown behind the Bennett Dam in British Columbia and elsewhere – will be severely impaired by floating timber, and landings will have to be made on mudflats, amidst the skeletal remains of miles upon miles of drowned trees. It goes without saying, then,

> that the tourist industry in northern Ontario will be obliterated if the water plot becomes a reality.

In sum, once the dams and attendant paraphernalia are put in place, the entire area thus "developed" will quite literally be gone. It follows that there will be nothing within the area by which a population – whether indigenous or non-indigenous – can support itself. The region will have become what in the United States has been described as a "national sacrifice area;" the people who reside there will have been converted into national sacrifice *peoples*.

As the dimension of this incipient disaster has dawned on more and more people throughout Canada, questions have been increasingly raised. The response of the Ottawa government has been, not to attempt to provide cogent answers and explanations of what it has in mind, but to become increasingly secretive about the whole thing. Large-scale, detailed maps of the targeted locals – on which it might be possible to plot out the likely extent of planned flooding – have been essentially withdrawn from circulation. Even general information and small-scale maps have become almost impossible to obtain. The view of the government is apparently that not until the dams have been erected, and the damage done (as it has been in the Columbia River Project, at James Bay, and in so many other locations around Canada), does the public have a right to know what is to be done to them with their "own" resources.

The writers of this paper hold a different view from that which prevails in Ottawa. We feel that the information at issue is the property of the people, and not merely the people of North America. Genocide is, after all, a crime against *all* humanity. More, we believe that what is planned in northern Canada holds significant consequences in terms of the planetary biosphere as a whole. We hope that the information which we present below will assist all people, everywhere, in making decisions concerning the formation of policy and flow of events not only in Canada and the U.S., but elsewhere, not only during the present moment and immediate future, but with an eye towards the outcomes of our thoughts and actions today upon those who will follow us seven generations in the future.

Water Diversion Schemes in Canada

An official document of the Canadian government entitled *Water Diversion Proposals of North America* summarizes eight different major scenarios within which Canada's water could be exported to the United States.[3] The most grandiose of these, called the North American Water and Power Alliance (NAWAPA) was devised by the Ralph M. Parsons Company of Los Angeles, California, and covers large-scale diversion and "hydrological engineering" across Canada, from Quebec to British Columbia. In large part, the remaining seven schemes can be considered variations on or additions to the NAWAPA plan. All eight proposals are concerned primarily with provision of huge amounts of fresh water to the arid and semi-arid U.S. western plains and southwestern desert regions, with secondary preoccupations centering on "adjustment" of water levels in the Great Lakes system (as a means of flushing industrial pollutants into the Atlantic Ocean), hydroelectrical power generation, and provision of additional water to the U.S. midwestern corn and industrial belts.

The Rocky Mountain Trench, Peace River, Lesser Slave Lake, Athabasca River, North Saskatchewan River, Qu'Appell River, Columbia River, Yukon River, Fraser River, Nelson River, Lake Winnipeg, and the Hudson and James Bays as well as many of the tributaries of these are all treated in the NAWAPA plan and its variants as part of a gigantic, interlocked hydrological "feeder system" pumping Canadian fluids down to more southerly consumers. There is at this point far more than passing indication that, rather than treating such ideas as lunacy or science fiction, Ottawa has begun to quietly bring the whole thing off the drawing board and into the realm of nightmarish reality. The matter can be best viewed on a province-by-province basis.

> *Quebec:* On November 29, 1971, David Orlikow said, during House of Commons debate and in reference to the James Bay Hydroelectric Project: "What is involved here is probably the largest project of its kind ever attempted on the North American continent...Half a dozen or more rivers are to be diverted, huge dams are to be built, an ocean port constructed, thousands of square miles of trees are to be cleared, and billions of dollars are to be expended in order to produce electrical power, a large part of which will be sold to the United States." As it turns out, Ottawa went heavily in debt, borrowing some $8 billion (largely against anticipated tax revenues) from the U.S. with which to finance this supposed "national commercial venture," and then spent this same money contracting an engineering firm in Omaha, Nebraska and acquiring U.S.-produced heavy equipment with which to undertake the James Bay project. Now that much of the project is complete, it is easy to see that a portion of Quebec about the size of West Germany has been irrevocably sacrificed at tax-payer expense while virtually all profits and benefits accrue to the United States.[4]
>
> *The Maritime Provinces:* In New Brunswick, the St. John River

has been dammed despite protests by local residents that the alleged benefits of this "development" were vastly overrated, and that irreparable environmental damage was being done. In Labrador, the hydroelectric project at Churchill Falls has also been completed. This last is in a "remote" area where its main impacts are felt only by indigenous peoples, and a full assessment of what has happened there is as yet unavailable. It *is* known, however, that nearly 100% of the power generated is being exported to the U.S. state of New York.

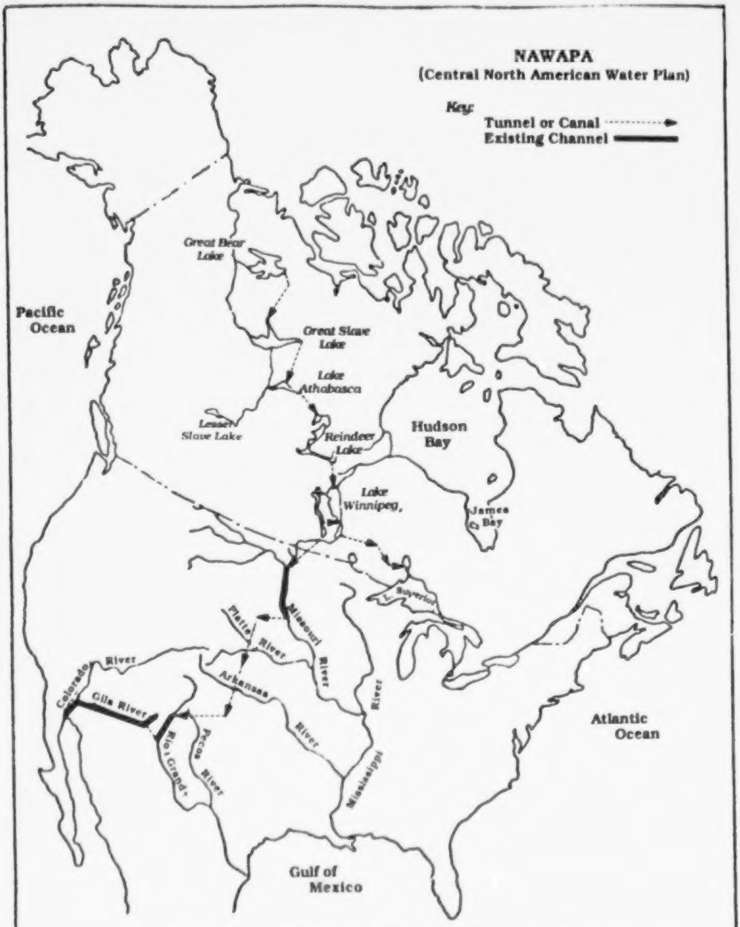
Ontario: North of Lake Superior, two diversions from the James Bay watershed into the Great Lakes were carried out during World War II. The headwaters of the Ogoki River were converted into a lake and now flow into Ombabika Bay on Lake Nipigon. The Long Lake watershed, which formerly drained north via the Kenogami River, was diverted south into Lake Superior through the Aquasaubon River at Terrace Bay. The Ogoki diversion was implemented in 1940 to permit Ontario Hydro to increase the capacity of its Niagara River generating plants to meet wartime demand. The purpose of the Long Lake diversion was to supply power to the U.S.-owned Kimberly-Clark paper mill at Terrace Bay. At the time of these diversions, the U.S. was not yet at war and refused either to reduce the quantity of hydro power Ottawa had committed to supply, or allow Canada to withdraw more than its prewar "share" of Niagara River water. Considerable evidence has accumulated over the past four years that, as U.S. need for electricity outstrips the generating capabilities created at James Bay and Churchill Falls, a number of further diversion projects in northwestern Ontario, along the lines of what was done in the '40s, have been scheduled.

The Prairie Provinces: The *Winnipeg Free Press* reports that Manitoba Hydro plans to regulate Lake Winnipeg water levels as part of the Nelson River power development project before going ahead with a planned diversion of South Indian Lake. According to Canadian Broadcasting Corporation (CBC) filmmaker Dick Bocking, some water will be diverted directly to the U.S. and the Kettle Rapids Dam and South Indian Lake hydro plant will, in combination, produce far more electricity than can conceivably be used by Winnipeg.

> The excess is clearly slated for export southward. Because of the expense associated with the Manitoba undertaking, comparably scaled diversions – called the PRIME Project – in Alberta and Saskatchewan have been temporarily postponed, although *not* abandoned.
>
> *British Columbia:* Horror stories concerning the Bennett Dam and of the *Columbia River Treaty* are well known.[5] Still, there is more afoot. A CBC television program aired on the night of January 18, 1972 was about proposals to dam the Fraser River. For a long while, nothing further was heard on this matter and it was all but forgotten. Presently, however, government studies, including drilling, are underway in preparation (at an estimated cost of $1 billion) to place a major dam at Moran Canyon, creating a reservoir 170 miles long. It is claimed by federal spokespeople that the purpose of this will be to "control flooding" along the Fraser and Thompson Rivers, and to irrigate a large portion of the dry lands found north of the latter. This obviously does nothing to explain why government engineers are even now exploring as many as 25 *additional* dam sites along the Fraser.[6]
>
> *The Yukon and the Northwest Territories:* It is true that, to date, no significant water diversion projects have been carried out in this region. It is nonetheless noteworthy that government feasibility studies have been conducted with regard to damming the headwaters of the Yukon River and assembling an overall diversion system which would involve the Great Slave and Great Bear Lakes in the Northwest Territories.[7]

As early as 1966, General A.G.L. McNaughton warned that if plans such as NAWAPA were actually effected, "Jurisdiction and control...although nominally international, would in reality be dominated by the [U.S., which] would thereby acquire a formidable vested interest in the national waters of Canada...it is obvious that if we make a bargain to divert water to the United States, we cannot ever discontinue or we shall face force to compel compliance." The general therefore concluded that ideas such as NAWAPA were a "monstrous concept, a diabolical thesis."[8]

Indeed, even without the use of its military power, the U.S. seems likely to be in a position to impose its will upon Canada once large-scale water diversion has begun. During the same year that General McNaughton issued


NAWAPA
(Central North American Water Plan)
Key:
Tunnel or Canal
Existing Channel
Great Bear Lake
Great Slave Lake
Lake Athabasca
Lesser Slave Lake
Reindeer Lake
Lake Winnipeg,
Hudson Bay
James Bay
Pacific Ocean
Superior
Platte River
Missouri River
Colorado River
Gila River
Arkansas River
Rio Grande
Pecos River
Mississippi River
Atlantic Ocean
Gulf of Mexico

SOURCE: *Water Diversion Proposals of North America*, Alberta Department of Agriculture (Adapted by Ward Churchill, Colorado AIM, © 1988)

Hydrological engineering on a grand scale. The central portion of the plan to "productively utilize" North America's water resources begins near the Arctic Ocean and ends in the Gulf of Mexico.

his warning, the Parsons Company in Los Angeles, author of the NAWAPA idea, estimated that Canada would need to invest some $40 billion as "its part" in actualizing the water plot. It was noted that virtually all of this sum would need to be borrowed from U.S. banks at a nominal interest rate of 8%, or $3.2

billion annually. The latter figure should be compared to the approximate $4 billion per year which Parsons estimated Canada could realize from export of hydroelectricity. By the time the debt is serviced and operational costs of generation underwritten, Canada would be experiencing a net *loss* on the whole affair, going ever deeper into debt to the U.S. while simultaneously siphoning off its resources and destroying its landbase in behalf of precisely the same U.S. interests. And, in many ways, the world economy of the late 1980s makes Canada's position *vis a vis* the U.S. even worse than it was 20 years ago. In a word, NAWAPA and similar plans stand only to place Canada in *exactly* the same posture as Mexico, Brazil, Peru and other Third World "debtor nations" whose internal resource and economic policies are dictated by the World Bank, International Monetary Fund and other U.S. fronts. History has yet to reveal a single instance in which such a circumstance benefitted the people – whether indigenous or non-indigenous – of the countries thus controlled. Yet Ottawa appears to be proceeding, full speed ahead.

The results are already obvious, and not only at James Bay. The Bennett Dam, to name a prominent example, has induced all the dire conditions sketched earlier in this paper. It caused the immediate drying up of the Athabasca River delta, destroying a crucially important breeding habitat for wildfowl as well as a key fur-trapping area for the indigenous population of the region. As the headpond was filling, it flooded large areas of forest land (the trees had been left standing), a matter which compounded the Indians' loss of their traditional fishing areas with a total denial of any ability they may have had to establish a viable commercial fishing enterprise. Snags and floating debris prevent the entire reservoir from being used for net fishing, and – in any event – de-oxygenation of the water, caused by decaying vegetation, precludes the vibrant fish-life required to support commercial fishing. By the *Columbia River Treaty,* Canada is compelled to maintain water-flow from reservoirs such as that behind Bennett Dam, essentially at the whim of the U.S. The resulting arbitrary and unpredictable raising and lowering of water levels often leaves mudbanks at the edges of these artificial "lakes" (preventing a viable tourist industry) and killing newly-started aquatic vegetation (thus once again hampering fish eating and breeding patterns).

Elsewhere, other examples abound. Ombabika Bay on Lake Nipigon, to list another instance, has completely silted over since the Ogoki diversion was effected, with the result that the formerly abundant pickerel found there have all but disappeared. At the Kootenay Dam in British Columbia, all indigenous people of the area were forced to leave their ancestral lands due to flooding (a consequence of the water plot neither they nor the public was notified of until the day the equipment arrived to begin construction). It is estimated that between 30,000 and 40,000 Indians will be similarly forced off their land in northwestern Ontario alone if the NAWAPA script for their territory is enacted. How many thousands more may be impacted in this way across Canada, should the whole of the water plot is realized, is presently impossible to say. It is clear, however, that nothing resembling the traditional indigenous way of life will be possible in the Canadian north in the aftermath.

Evidence that the Water Plot is Real

Government spokespeople like to say that those who refer to the water plot are "paranoid" or "delusional." However, federal documents, eyewitness reports, aerial photographs and other factors all add up to present quite a different (if hardly complete) picture. By all indications, northwestern Ontario has become the focus of the most comprehensive hydrological engineering effort yet undertaken in Canada. Further, it is clear that what is happening now has roots extending at least a quarter-century back into secret government planning:

> In October 1965, the Prime Minister of Canada and the Premier of Ontario announced that the governments of Canada and Ontario had agreed to undertake a series of co-ordinated studies on Ontario's northern water resources and related economic developments...Most of the work is being undertaken in five river basins draining to Hudson Bay and James Bay...these are the Severn, Winisk, Attawapiskat, Albany and Moose River basins.[9]

It followed that:

> The Co-ordinating Committee prepared a statement of objectives for the studies to be carried out separately by agencies of the two governments, as follows: "With respect to waters draining into James Bay and Hudson Bay in Ontario, to assess the quantity and quality of water resources for all purposes; to determine present and future requirements for such waters; and to *assess alternative possibilities for utilization of such waters locally or elsewhere through diversion* [emphasis added].[10]

From there:

> Approximately four miles of levelling was carried out south of the Pipestone River to complete a grid extending from Pipestone River to the northern boundary of the Ogoki River and interconnecting structure sites along the Aguta glacial moraine. These sites were investigated in 1967 in connection with *an engineering study of a*

> *scheme for using Aguta moraine as a diversion barrier.* A topographic survey by the transit-stadia method was completed for a dam site on the Ogoki River at Whiteclay Lake *to investigate the feasibility of providing additional storage required to regulate increased diversion flow to the Great Lakes.* In addition, work described below was carried out in connection with *engineering feasibility studies of power development on the Albany River and of diverting water to the Albany River from streams further north* [emphasis added throughout].[11]

Additionally:

> Federal Surveys and Mapping Branch...completed the preliminary mapping of *a possible diversion route between the Attawapiskat and Albany Rivers...A potential diversion route between Winisk Lake and the Attawapiskat River* were also mapped by the [Engineering] Division [emphasis added].[12]

Federal and provincial agencies, and private consulting engineering firms actively involved in the Ontario development project are known to include Canada's Department of Mines, Energy and Resources (Inland Waters Branch); the Geological Survey of Canada (Policy and Planning Branch); Canada Department of Transport (Meteorology Branch); the Water Survey of Canada (Federal Surveys and Mapping Branch); the Federal Engineering Division; the Ontario Water Resources Commission (Division of Water Resources, Hydrologic Data Branch, and Surveys and Projects Branch); the Ontario Department of Economics (Applied Economics Branch); the Ontario Department of Treasury (Economic Planning Branch); the Ontario Department of Lands and Forests; the Ontario Department of Mines; the Ontario Hydro-Electric Power Commission; Gibb, Underwood and McClellan (a U.S. engineering firm); James F. McLaren (a U.S. engineer); J.W. Livvy (an Idaho engineer with a branch office in Vancouver, B.C.); J.D. Mollard (a Regina engineer); and Ripley, Klohn and Leonoff (a Winnipeg engineering firm).[13] The U.S. Army Corps of Engineers has also been directly involved, conducting at least one "ice survey" during the period 1967-69.[14]

These agencies, particularly the branches of the Water Resources Commission and Department of Energy, Mines and Resources, have steadily collected data on streamflow, snow-course, rainfall, water levels, chemical analyses of water, bathymetric contours of lakes and geological mapping. They have also conducted considerable core inspection and hydraulic testing of bore holes drilled along the Albany River, have levelled large areas, and have conducted feasibility studies of alternative diversion routes to those mentioned in the government documents quoted above, and have even gone to the lengths of making anthropological/sociological studies of the likely effects of development on the indigenous peoples of the area.[15] The initial field work in Ontario appears to have begun as early as 1966 (the year of the NAWAPA proposal), and to have accelerated steadily after 1969.[16] At present, it looks as if all the preliminary work has been accomplished, and that only the right public climate is necessary to put a program entailing full-scale actualization of the Ontario plan into motion.

Conclusion

Diversion of Canadian water – and concomitant destruction of the Canadian north – is the answer to nothing, regardless of the rationalizations advanced in its behalf. The vast irrigation projects planned for the arid and semi-arid U.S. western states using fluids brought down from the sub-Arctic represents, not the "development" of these dry lands, but the permanent destruction of their ecological equilibrium. The "solution" for locales such as Arizona, Utah and Colorado does not lie in the "re-engineering" of nature and massive importation of water, but in keeping human populations in balance with the habitat and restricting both agricultural and industrial development to sustainable levels. Similarly, draining Great Slave Lake in order to "flush" pollutants out of Lake Erie provides no "cure" for the contamination of the Great Lakes. The pollution, after all, will simply be washed elsewhere while the processes which ruined Lake Erie (and Lake Ontario, and which are even now ruining Lakes Michigan, Superior and Huron) continue unabated. The solution lies not in the destruction of northern ecosystems, but in bringing industrial pollution itself under control.

In terms of hydroelectrical power generation, the wholesale destruction of the last vast wilderness in North America in order to feed the air conditioners and neon signs of the U.S. Atlantic megalopolis makes no sense at all. Self-evidently, given present consumption dynamics, the U.S. "need" for electrical power will continue to outstrip available sources until every potential erg of hydroelectric power has been drained from the Canadian north (and everywhere else) leaving only a devastated countryside surrounding untenable and uninhabitable urban blight. And then what? We will have *no* where to turn. The solution to this ever-growing crisis is patently *not* to sacrifice the biosphere in pursuit of energy, but to adopt policies leading in the other direction, toward bringing the compulsive desire for ever more energy under control. And again, the relinquishment (for a fee, or under coercion) of sovereign prerogatives by the Ottawa government to its U.S. counterpart, a matter integral to "water development" in the north, goes in precisely the wrong direction; what is desperately needed to bring the vast technocratic process at issue to heel is a proliferation of reasserted sovereignty among *many* peoples, *many* nations, *not* a continued concentration of the power of life-and-death decision in fewer and fewer statist hands.

A stand must be taken and taken soon on such matters. If the water plot is consummated, it may be too late. What must be understood is that the Canadian north – like the Antarctic, the Amazon Basin in Brazil, and a few other portions of the globe – is absolutely essential to ecological survival. If it is destroyed, eventually everything will be destroyed. We are *all* running out of "alternatives," and places to hide from the grim reality which now stalks us, regardless of where and how we live.

The indigenous peoples of northern Canada represent the best and perhaps only real barrier against the hydrological rape of northern Canada. Of anyone, they have the clearest rights to the land, both aboriginally and legally, through their many treaties with the Crown. Support for Indian treaty rights by the population of Canada – indeed, by people from all parts of the world – is the surest route to blocking the water plotters. So long as the Cree, the Anishinabe, Athabascans and other native peoples are able to exercise their sovereign rights over their territories, plans such as NAPAWA can never be realized. And so long as traditional indigenous economies are able to flourish in the Canadian north (and in Brazil, and elsewhere), we need not fear for the destruction of the environment upon which we must all depend for our very existence. Put another way, this is to say that so long as the indigenous peoples of the north survive *as such*, so will we all.

End Notes

1 See Higgins, James, "Hydro-Quebec and Native People," *Cultural Survival Quarterly*, Vol. 11, No. 3, 1987.

2 *Ibid.*

3 Canadian Council of Resource Ministers, *Water Diversion Proposals of North America*, Alberta Department of Agriculture, Water Resources Division, Development Planning Branch, 1968.

4 Higgins, *op. cit.*

5 See, for example, Waterfield, Donald, *Continental Waterboy*, Free North Press, Toronto, 1970.

6 This is well covered in *Water Diversion Proposals of North America, op. cit.*; the NAWAPA proposal calls for yet another dam just north of the Moran site.

7 This is, again, part of the NAWAPA scheme; see *ibid.*

8 McNaughton's statements are reprinted in *Water Resources of Canada,* Royal Society of Canada, Ottawa, 1968.

9 Ontario Water Resources Commission, *Data for Northern Ontario Water Resources Studies, 1966-68,* (Water Resources Bulletin 1-1, Gen. Series), Toronto, 1969, p. 1.

10 *Ibid.,* p. 2.

11 Co-ordinating Committee on Northern Ontario Water Resources Studies, *Sixth Progress Report to the Governments of Canada and Ontario,* Toronto, 1968, pp. 6-7.

12 Co-ordinating Committee on Northern Ontario Water Resources Studies, *Seventh Progress Report to the Governments of Canada and Ontario,* Toronto, 1969, pp. 8-9.

13 Ontario Water Resources Commission, *op. cit.,* pp. 2 & 10; Co-ordinating Committee on Northern Ontario Water Resources Studies, 1968, *op. cit.,* pp. 3-6, 8; Co-ordinating Committee, 1969, *op. cit.,* p. 6.

14 *House of Commons Debates,* Ottawa, 1969-70, p. 4007.

15 Ontario Water Resources Commission, *op. cit.,* inclusive; Co-ordinating Committee, 1968, *op. cit.,* pp. 2 & 6; Co-ordinating Committe, 1969, *op. cit.,* pp. 7-8.

16 Ontario Water Resources Commission, *op. cit.,* p. 2.

Those from the Dam the Dams Campaign who assembled the original paper from which the present essay was written were nearly all from Ontario and included Harry Achneepineskum (Ogoki), Jim Atkinson (Kaministiquia), John Baily (Aurora), Jim Boulton (Kenora), Roberta Boulton (Kenora), Paul Filteau (Kirkland Lake), Millie Fiorito (Thunder Bay), Dan Gilbert (London), Simon Hoad (Toronto), Dan Keller (Thunder Bay), Brian Leekley (Thunder Bay), Steven Lowe (Montreal, Quebec), Richard Martin (Thunder Bay), Dave McLauchlan (Harrow), Bert Rohan (Edmonton, Alberta), Patricia Rooney (Sault Ste. Marie), Inger Smith (Edmonton, Alberta), Gerald Stricker (Kenora), Ellen Travolo (Thunder Bay), Ahti Tolvanen (Thunder Bay), Nick Van Eeden (Terrace Bay), Ulrich Wendt (Kamanistiquia), and John Williams (Edmonton, Alberta). Rewriting/updating for this volume was accomodated by Ward Churchill of the Institute for Natural Progress.

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Last Stand at Lubicon Lake

An Assertion of Indigenous Sovereignty in North America

by Ward Churchill

There are times when the situation of even the smallest of peoples can provide considerable insight into the likely fate of much broader groups, the outcomes of their seemingly particularized circumstances becoming indicative of far more general problems. Such a case is the ongoing struggle of the Lubicon Lake Band of Cree in northern Alberta to preserve their ancestral landbase, their way of life and their very identity as a people. The methods which have been/are being used by a consortium of Canadian governmental and corporate entities to deny such things to the people of Lubicon Lake, and the reasons underpinning this governmental-corporate behavior, add up to a prospectus for all the indigenous peoples in the Anglo dominated portion of this hemisphere. The matter is thus a truly critical issue in Native North America.

Background

The whole thing began in 1899, when a delegation from the Canadian government traveled through northern Alberta to secure the signatures of representatives from various American Indian groups in the area upon an international document titled *Treaty Eight*. The purpose of this instrument, as had been the case of each of the other Canadian-Indian treaties (a legal process begun in 1781), was to gain "clear title" to as much Indian land as possible for the British Crown. In exchange, under provisions of *Treaty Eight*, each Indian band was to receive a formally acknowledged ("reserved") area within its traditional domain for its own exclusive use and occupancy, as well as hunting, fishing and trapping rights within much larger contiguous territories. Additionally, each band was to receive a small monetary settlement for lands lost, and each individual band member was to receive – in perpetuity – an annual cash stipend.[1]

It was well understood in Ottawa at the time that the treaty commissioners had failed to contact, or secure agreement to the terms and conditions of *Treaty Eight*, from many of the small bands scattered across the vast area impacted by the document. The Canadian government nonetheless chose to view these bands as being equally bound by the treaty, and relied upon the Indians' "moccasin telegraph" to eventually spread the word. An improvised arrangement was established wherein members of previously unnotified bands might simply show up at agencies serving the signatory groups in order to receive annual per capita payments. Little or no thought appears to have been devoted by the government to deciding how to keep such intermingling sorted out for record-keeping purposes, or how Canada might go about meeting its obligation to demarcate acceptable reserved areas for each late-notice band as it became identified.[2]

As it turned out, members of the Lubicon Lake Band did not receive word of *Treaty Eight* until some time around 1910. At that point, nothing much changed for them other than that band members gradually began to make an annual trek to Whitefish Lake, location of the agency serving another Cree group, in order to receive their annuities. The local Indian agent, following government guidelines, simply recorded their names on his pay-list and went on about his business. For their part, the Lubicons continued to live where and how they had, very much unconcerned with what went on in Ottawa, or even at Whitefish Lake. The situation remained unchanged for about a quarter-century.[3]

At some point in 1935, however, the residents of Lubicon Lake were informed that, given the appearance of their names on the list of Whitefish Lake payees, they were considered by Canada to be part of that more southerly band. It was suggested that they were therefore living in a location well off "their" reserved land and should accordingly relocate to a place nearer the Whitefish Lake agency. Those at Lubicon Lake, of course, protested this misidentification and, for the first time, requested the establishment of an official reserve of their own.[4] This led, in 1939, to a visit from C.P. Schmidt, Alberta Inspector of Indian Agents, for purposes of investigating their claim. The visit, in turn, resulted in a report by Schmidt to Ottawa stipulating that he had concluded the people at Lubicon Lake were in fact a band distinct from those at Whitefish Lake, and that they were thus entitle to establishment of their own reserve.[5]

The Canadian government initially accepted Schmidt's recommendation, as well as his census fixing the Lubicon population as being 127 persons. This number was multiplied by the 128 acres per person the government felt was a sufficient landbase for Indians, and it was thereby decided that the Lubicon Lake Reserve should be composed of some 25 square miles of territory. An aerial survey was conducted and, in 1940, the lines of the new reserve were preliminarily drawn on the map. All seemed to be going quite well, with only the remaining formality being a ground survey by which to set the reserve boundaries definitively. Canada by this point being enmeshed in World War II, however, and qualified surveyors being correspondingly scarce, it was decided to postpone this finalization of the reserve until hostilities had ceased.[6]

District Indian agent and Royal Canadian Mounted Police guard dispensing treaty annuities at Whitefish Lake, 1939. (Photo: *Richard Finnie*)

Things began to get sticky during the summer of 1942 when a man named Malcolm McCrimmon was sent to Alberta to see that the province's annuity pay-lists were in order. McCrimmon's stated concern, as part of a broader desire to "put all of Canada's resources behind the war effort," was to insure that "these Indians are not getting something for nothing." To this end, he arbitrarily rewrote the rules pertaining to eligibility for per capita payments so that all who had been added to the *Treaty Eight* pay-lists after 1912 were eliminated out-of-hand, and then went on to require that "an individual must furnish acceptable proof that his male ancestors were of pure Indian blood." Given that only written birth records were posited as constituting such proof, and that Indians traditionally maintained no such records, the latter clause can be viewed as an attempt not only to limit the number of Indians recognized as such (and therefore receiving annuities), but to eliminate them altogether. In any event, McCrimmon quickly removed the names of more than 700 northern Alberta Indians – including 90 of the 154 then belonging to the Lubicon Lake Band – from the pay-lists. He also recommended specifically *against* establishment of the Lubicon Lake Reserve because there were no longer "enough eligible Indians to warrant" such action. Hence, the earlier "postponement" of the reserve's actualization assumed an aura of permanence.[7]

Enter the Oil Companies

On April 17, 1952, the director of the Technical Division of (Alberta's) Provincial Lands and Forests wrote to the federal Department of the Interior in Ottawa that:

> Due to the fact that there are considerable inquiries regarding the minerals in the [Lubicon Lake] area, and also the fact that there is a request to establish a mission at this point, we are naturally anxious to clear our records of this provisional reserve if the land is not required by this Band of Indians.

Alberta followed up shortly thereafter by informing Ottawa that the Lubicon Lake site seemed "too isolated" to be effectively administered as a permanent reserve, and that:

> It is recommended that the twenty-four sections of land set aside for a reserve at Lubicon Lake be exchanged for [a more convenient site]...[The Deputy Minister for Provincial Lands and Forests had no] objections to the transfer *though there is no assurance that the mineral rights could be included [with the "more convenient" site]...If the reserve at Lubicon is retained, the Band would have the mineral rights...[We] recommend the exchange be made even if mineral rights cannot be guaranteed...* [emphasis added].[8]

The initiative embodied in this flurry of correspondence from Alberta to Ottawa was capped off on October 22, 1953, when the province handed the federal government a virtual ultimatum:

> It is some years now since [the Lubicon Lake site was provisionally reserved]...[and] it would be appreciated if you would confirm that the proposal to establish this reservation has been abandoned. *If no reply has been received within 30 days, it will be assumed that the reservation has been struck from the records* [emphasis added].[9]

For its part, the Department of Interior opted to allow inaction to take the place of its acknowledged obligations to the Lubicon Lake Cree, allowing the province of Alberta to play the heavy in what amounted to an emerging and fully national policy of energy development in the Canadian north. The matter was rather clearly admitted in a February 25, 1954 letter from the Alberta Regional Supervisor for Indian Affairs to the Indian agent within whose area of responsibility the Lubicons fell:

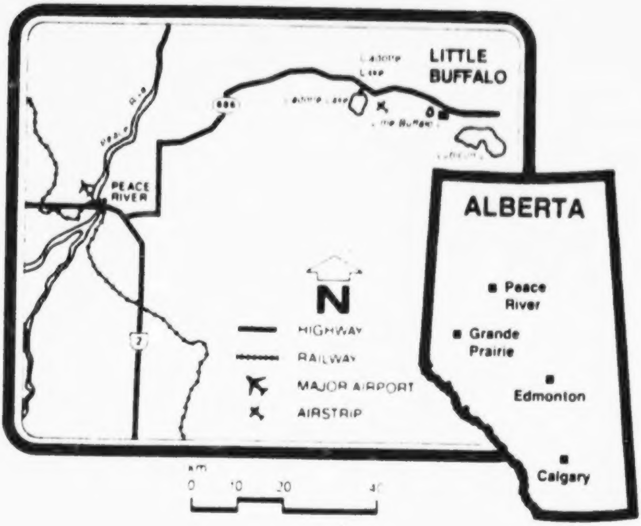
> As you are no doubt aware, the Deputy Minister [for Provincial Lands and Forests] has from time to time asked when our Department [of Interior] was likely to make a decision as to whether or not to take up [the Lubicon Lake] Reserve. *There were so many inquiries from oil companies to explore the area that it was becoming embarrassing to state that it could not be entered. That situation existed when our Branch [Indian Affairs] was advised that unless the Department gave a definite answer before the end of 1953 the Provincial Authorities were disposed to cancel the reservation and return it to Crown Lands which then could be explored...This was discussed when I was in Ottawa last October. I was of the opinion that our Branch had taken no action and that the block [of land at Lubicon Lake] would automatically return to Provincial Crown Lands*...[emphasis added].

The supervisor then went on to explain that the federal government was very well aware of the implications of this line of action, instructing his agent to collaborate directly in effecting the expropriation of Lubicon resources:

> In approaching the subject [of "a more accessible" reserve site] with the Indians, *I think it would be well to keep in mind that the mineral rights [at Lubicon Lake] may be very much more valuable than anything else...If this Block [of land at Lubicon] was given up, then it is very unlikely that mineral rights would be made available with the surface rights of any other reserve that might be picked up. You are fully familiar with the situation and the Indians and their habits*...[emphasis added].[18]

As it turns out, the minerals with which government correspondence was primarily concerned at the time mostly consisted of oil and natural gas, rich deposits of which had earlier been determined by Petro-Canada, Ottawa's own energy corporation, to underlie the entire Peace River region. Petro-Canada had already enlisted a preliminary consortium of 10 transnational energy giants – including Royal Dutch Shell, Shell Canada, Exxon, Gulf, and Standard Oil of California – to become involved in "exploration and development" of the area. Both the federal and provincial governments stood to reap a considerable profit on the bargain, with only the rights of a few small groups

Lubicon Land



of Indians standing in the way of this "progress." The obvious "solution," under such conditions, was simply to deny Indian rights within the intended development zone, bringing about their total removal from the area.

Even at that, however, there appears to have been substantial official resistance (especially within the Alberta government) to the idea of providing *any* acreage with which to establish substitute or "replacement" reserves for those Indians targeted for coerced relocation. As concerns the Lubicon in particular, the focus of governmental discourse had shifted to the vernacular of outright liquidation by early 1955, a matter readily evidenced in an instruction issued by the federal [Interior] Departmental Superintendent of Reserves and Trusts to his staff:

> Consult the appropriate files and advise whether action was taken by the Department to officially establish [the Lubicon Lake Band] as a Band, for at this time any such action appears rather short-sighted, and if this group was never established as an official Band, *it will serve our purposes very well at the present time...* [emphasis added].[11]

In another memo, the Alberta Regional Supervisor for Indian Affairs clarified the government's intent in denying the Lubicons' existence:

> The Whitefish Lake Band have no objection to [the Lubicon Lake people] being transferred...to their Band and I am suggesting [the local Indian agent] contact those members [of the Lubicon Lake Band] who are at present residing at Whitefish Lake and Grouard and ascertain if they wish to file applications for transfer. If they all wish to transfer it would reduce the Lubicon Lake Band membership to approximately thirty...[12]

Elsewhere, the supervisor observed that, "It is quite possible that the seven families [who had been approached and said they'd accept enfranchisement in another band if they could not have a reserve at Lubicon Lake itself] will make application for enfranchisement in the near future...Should they do so I would recommend that enfranchisement be granted...The few remaining members of the [Lubicon Lake] Band could no doubt be absorbed into some other band."[13] In the interests of oil, then, the Lubicons finished the decade of the 1950s with the gains they'd seemed to make in their relationship to the Canadian government during the 1930s and early '40s largely erased, and confronted by the specter of complete administrative elimination as an identifiable human group (*i.e.:* they were, by international legal definition, faced with genocide).[14]

Development Begins

Things no doubt proceeded more slowly than Ottawa and Alberta originally intended. The abundant availability and low cost of oil through the 1960s created a situation in which Petro-Canada's transnational partners deemed it cost-prohibitive to construct the infrastructure required to begin large-scale oil production in the Canadian hinterland, and it was not until the OPEC-induced "energy crisis" of the early '70s that this assessment of economic reality was altered. In 1973, investments were finally secured with which to finally begin the building of an all weather road from Edmonton through the Lubicon Lake area.[15]

During the interim, however, the Lubicons had had ample opportunity to overcome their initial confusion concerning the government's various ploys, and had all but unanimously rejected the notion that they should be merged with the rolls of other bands. At about the same time that the road construction project was commenced to the south, the traditional governing council at Lubicon Lake met to reaffirm the existence (and right to *continuing* existence) of the band. It was also decided that, since Ottawa had done nothing positive to solve the "question" of who in fact belonged to the band, the band would exercise its sovereign right of determining this for itself, independent of federal concerns and criteria. Those who had allowed themselves to be placed upon the rolls of other bands had largely returned and resumed their identification as Lubicons by the end of the year.

For approximately five years a rough stasis was again maintained, as road work dragged on and on. The Lubicons continued to live and conduct their affairs very much as they had throughout the 20th century, despite the persistent federal and provincial policy controversies their existence had sparked. Then, in 1978, as road completion reached the Lubicon Lake region, there was a sudden upsurge in seismic and other forms of oil and gas exploration. As outsiders poured into the area, setting dynamite charges, bulldozing access roads and marking cut-lines, the true dimension of what was happening was finally revealed. With their entire way of life plainly in jeopardy, the Indians could no longer ignore the government. They were forced to attempt to mount a formal response.[16] As they themselves explained it in 1983:

> Until about 10 years ago the questions of land, Band membership, mineral rights and rights generally were essentially academic. Our area was relatively isolated and inaccessible by road. We had little contact with outsiders, including Government officials. We were left pretty much alone. We were allowed to live our lives, raise our families, and pursue our traditional way of life without much interference. [But] about 10 years ago the Provincial Government started construction of an all-weather road into our area. The purpose of the road is clearly to facilitate development of our area. The road was completed about five years ago...Faced with the prospect of an influx of outsiders into our traditional area, we tried to file a caveat with the Provincial Government, the effect of which would have been to formally serve notice on all outsiders of our unextinguished, aboriginal claim to the area.[17]

Alberta refused to file the caveat, and the Lubicons attempted to force the matter in federal court:

> The Provincial Government asked the court to postpone hearing the case until a similar case being tried in the Northwest Territories was decided. The case in the Territories went against the Indians; however, the decision read that the court there would have found for the Indians, had the law been written as it was in Alberta and Saskatchewan...The Province then went back to court and asked for another postponement, during which they rewrote the relevant Provincial legislation, making the changes retroactive to before the time we tried to file our caveat...In light of the rewritten, retroactive Provincial legislation, the [federal] judge dismissed our case as no

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> longer having any basis in law...It is noteworthy that the Federal Government chose to exercise its trust responsibility [to the Indians] during the caveat case by filing a brief *in behalf of the Provincial Government*...[emphasis added].[18]

The Lubicons then petitioned Ottawa, under conventional Canadian trust provisions, to provide them with the financial support to seek injunctive relief through the courts, and to appoint a special land claims commissioner to attempt to resolve land title issues in the Peace River region. These ideas were rejected by the government in 1980. Instead, during the summer of 1981, "the Provincial Government declared our community to be a Provincial hamlet, surveyed it, divided it up into little 2-acre plots, and tried to force our people to either lease these plots, or accept them as 'gifts' from the Province. People who supported the Provincial Government's Hamlet and Land Tenure Program were promised services and security. People who opposed the program faced all kinds of consequences..."[19]

> Fearing that acceptance of the Provincial Hamlet and Land Tenure Program would jeopardize our land rights, we asked the Province to delay implementation of their program until its effect on our land rights could be determined. They refused, stating that they had checked the legal implications of the program and had been assured that there was "no relationship between land claims and land tenure"...When we continued to question the effect implementation of their program would have on our land rights, they resorted to a less legalistic form of deception. One old woman, who can neither read nor write, signed a program application form after being told that she was signing for free firewood. Another was told that she was signing for an Alberta Housing trailer. A third was told she was signing a census form.[20]

The real relationship between Alberta's Hamlet and Land Tenure Program on the one hand, and land rights/land claims on the other, was amply revealed the following year: "When it became absolutely and unavoidably clear that we would not get anywhere with the Provincial Government, we appealed to the Federal Minister [for Indian Affairs]. He responded by sending the Province a telex requesting a six-month delay in the implementation of the Provincial land tenure program, during which time, he said, he hoped to resolve the question of our land rights...The Provincial Minister of Municipal Affairs responded to the Federal Minister's telex with a letter, questioning the very existence of our Band, and stating that *our community could not be part of a land claim anyway, since it was now a Provincial Hamlet, and was no longer classed as unoccupied Crown land*...[emphasis added]."[21]

Legal Stalemate

The federal minister concerned, E. Davie "Jim" Fulton, appears to have been something of a maverick in governmental circles, and was unconvinced by Alberta's argument. Further, he actually sat down and talked with the Lubicon leadership, reaching the conclusion that the band's position was not unreasonable and could accommodated in some fashion by both Ottawa and the province. He therefore convened a meeting between representatives of his own federal Indian ministry and the provincial government of Alberta during January of 1982, intending to negotiate a resolution to the Lubicon land issue "agreeable to all parties concerned" (typically, the Indians themselves were entirely excluded when it came to such high-level deliberations over their rights and fate). Negotiations broke down almost immediately, however, when:

> During the meeting between Federal and Provincial officials, the Province rejected out-of-hand most if not all of the points discussed between Federal officials and officials of the Band. Provincial officials refused to consider the question of land entitlement until they were satisfied as to the "merits" of that entitlement. They refused to agree to a timetable for determining the merits of that entitlement. They refused to consider the land which had been originally selected or which included our traditional community of Little Buffalo Lake. They refused to include mineral rights. They refused to consider any compensation whatsoever. They even refused to meet with any representatives of the Band.[22]

In the wake of the January meeting, the Lubicons once again requested financial assistance from the Indian ministry with which to litigate their land claims. Implausibly, under the circumstances, Fulton denied the request on the ostensible basis that, "The negotiating route has not been exhausted."[23] At a council meeting, the Lubicons then resolved, in view of the expressed intransigence of Alberta authorities and the bad faith evident in their continuing pursuit of the Hamlet and Land Tenure Program, to suspend all further dealings with the provincial government. It was also decided to pursue legal remedies despite Fulton's default on federal trust obligations, on the basis of limited band resources and whatever external support might be mustered. Consequently, a second legal action was entered by the Lubicon Lake Cree before the Alberta Court of the Queen's Bench in February, 1982.[24]

> In the second legal action we asked the court for a declaration that we retain aboriginal rights over our traditional lands, that these

> rights include mineral rights, that these rights are under exclusive Federal jurisdiction, and that the oil and gas leases granted by the Province [on Lubicon land] are null, void and unconstitutional, or at least subject to Indian rights. We also asked the court to grant an immediate injunction preventing the oil companies from undertaking further development activities in our area.[25]

Attorneys for Alberta and for the various corporations involved argued heatedly that the province itself enjoyed immunity from the desired injunctive relief, and that the corporations (including Petro-Canada, a purely federal entity) – as contractual agents of the province – were sheltered under the same mantle of immunity. To its credit, the court ruled in favor of the Lubicons on this outrageous thesis. But it then closeted itself to consider a range of procedural issues raised by the province and corporations concerning why the injunctive matter should not be heard, even though the Indians were entitled to bring it before the bench.

> Ultimately, we beat back all of these procedural challenges, but not in time to stop much of the damage that we'd hoped to stop. Concluding arguments on the procedural points were heard on December 2, 1982. In Alberta, such procedural points are usually decided very fast. However, in this case, a decision was not brought down until March 2, 1983, exactly three months to the day from the time concluding arguments were heard. These three months coincided exactly with the oil companies' winter season, which is of course the period of most intense development activity, since the ground at this time of year is frozen, allowing for the relatively easy transport of heavy equipment.[26]

Thus, the court was able to arrive at a judicially sound conclusion (thus avoiding the entry of a disastrously contaminating precedent into Canadian law, or risking being overturned upon review by a higher court) while simultaneously allowing those it was preparing to rule against to complete their objectionable activities prior to entry of its ruling. All the oil companies had to do was accelerate their exploration operations so as to be able to complete them in one winter rather than the two or three which had been remaining on their various schedules. The Lubicons were then presented with the opportunity to obtain an injunction suspending governmental/corporate operations which had already been completed.

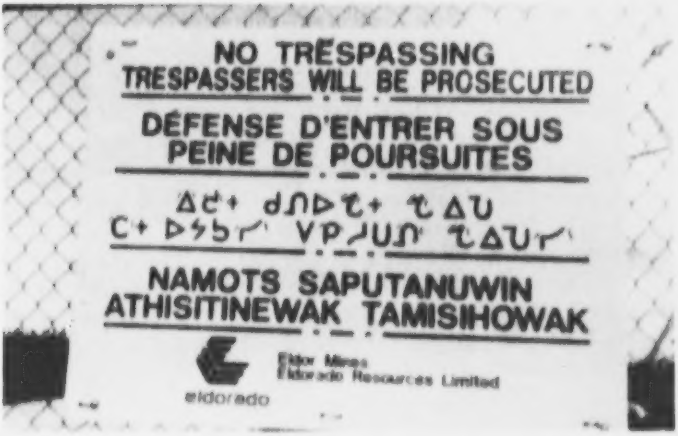
This was the limit of the Lubicons' legal "success." With the most environmentally damaging aspects of the oil extraction process largely completed, the court was free to rule that pumping operations could proceed insofar as they – in themselves – presented "no real threat" to the Cree way of life. No attempt was made to determine whether the sheer infusion of outsiders into the formerly isolated Lubicon territory might not have precisely this effect. As a result of the court's *de facto* non-intervention in oil exploitation, the value of the petroleum being pumped from the immediate area of the Lubicon claim had exceeded $1 million U.S. per day by mid-1987, and was rising rapidly.[27]

Concerning the broader issues of land rights and jurisdiction, the court held that it could not resolve the issues because, as federal Indian minister Bill McKnight (who had replaced Fulton, relieved as being "too sympathetic" to his charges) later put it: "The band...attempted to follow two mutually exclusive processes – a settlement under *Treaty [Eight]* and a settlement in aboriginal title." The court made no comment at all on the fact that it had been the government itself which had barred exercise of Lubicon rights under the treaty while simultaneously holding that they were covered by the document, at least for purposes of extinguishing their aboriginal title. Further, the court offered no hint as to what, in its view, would be the correct course for the band to pursue in order to effect a settlement under Crown Law.

The Lubicons, of course, took the matter to the Alberta Court of Appeal, which upheld the lower, Queen's Court in January, 1985. In March, and again in May of the same year, the Supreme Court of Canada refused to hear the case.[28] Although the Lubicons have continued to pursue legal remedies in the Canadian courts since then, the weight of their efforts to achieve a real solution has shifted heavily into other areas of endeavor.

Assertion of Lubicon Sovereignty

In 1982, under the leadership of Chief Bernard Ominayak, the people of Lubicon Lake (defining themselves at this point as being some 250 individuals)[29] began to express an ever sharper articulation of their traditional rights as a wholly sovereign people. Following this logic, they increasingly deemphasized their right – under provision of *Treaty 8*, and always resisted by the Alberta government – to the 25.4 square mile reserve provisionally demarcated in 1940. Instead, reasoning that since they'd not signed a treaty of cession they'd ceded no land at all, they began to articulate their land claim in terms of the territory historically used by their ancestors for purposes of hunting, fishing, trapping, occupancy and trading purposes. In total, this amounts to approximately 1,000 times the geography involved in the reserve Alberta had so resolutely attempted to cheat them out of (but which they might well have accepted, had the government followed through on its clear obligation to convey title to them during World War II). This 25,000 square mile tract of land claimed by aboriginal right comprises some 25% of the the entire province of Alberta. In addition, the Indians stipulated that they were due some $900


NO TRESPASSING
TRESPASSERS WILL BE PROSECUTED
DÉFENSE D'ENTRER SOUS
PEINE DE POURSUITES
NAMOTS SAPUTANUWIN
ATHISITINEWAK TAMISIHOWAK
Eldor Mines
Eldorado Resources Limited
eldorado

The relationship between "corporate economic development" and the loss of indigenous land base could not be made clearer than in signs such as this one by the Eldorado Mines – written in English, French, Cree, and Anishinabe – which have sprouted across northern Canada during the past three decades. (Photo: *Flying Swan*)

million U.S. for damages done their territory during the period of illegal Canadian occupancy.[10]

The initial government response was, to be sure, to scoff at such "presumptuousness." The Lubicons, however, rather than to attempt to continue to argue the merits of their case in governmentally sanctioned (and controlled) fora such as the courts, launched a public outreach and education campaign designed to secure widespread popular support during 1983 and '84. To the government's surprise and consternation, the response to this effort was so generally favorable that steps were necessary to contain the situation. This assumed the form of an "independent investigation" undertaken in 1984 by the Reverend Dr. Randall Ivany, Ombudsman of Alberta. He dutifully went through the motions of examining the Lubicon claims before releasing a report, titled *Complaints of the Lubicon Lake Band of Indians,* reaching the entirely predictable conclusions that there was "no substance" to the Indians' allegations, and "no factual basis" to their charge that various layers of Canadian government were engaged in the practice of cultural genocide against them.[11]

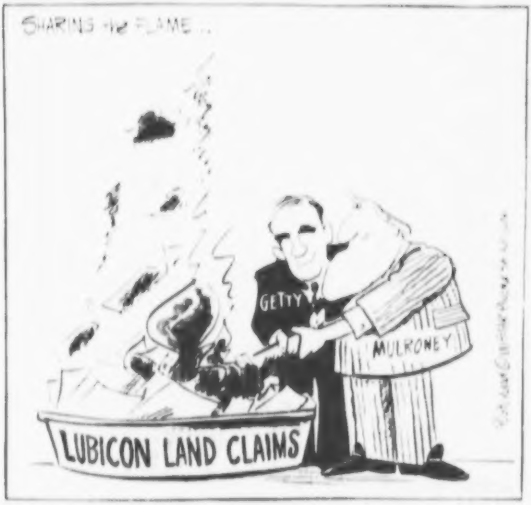
This official outcome was supposed to undercut the rising tide of public sentiment in support of the Lubicons. But its very transparency accomplished the exact opposite result, and it was at about this same time that Chief

Ominayak and other Lubicon leaders began to issue statements to the effect that they were considering the conducting a boycott, large-scale demonstrations, and other disruptions of the 1988 Winter Olympics, scheduled for Calgary, Alberta. In something of a panic, the government began to adopt what it must have felt were extraordinary measures in an effort to avert an international embarrassment and scrutiny of what it had been doing to indigenous peoples under the guise of "domestic affairs." Ivany's sham investigation was quickly replaced by another, functioning under auspices of the Department of Indian and Northern Affairs, and headed by E. Davie Fulton, recalled to from his banishment from Indian affairs for this purpose insofar as Ottawa held him to be a "friend of the Indian."[32]

The first tangible result of this change in government attitude was the offer, made on December 10, 1985 and recommended by Fulton, of the original 1940 reserve area, complete with mineral rights, which had appeared so "problematic" to Canadian policy-makers only a year before.[33] The overture was rejected on the same day by the Lubicons, with Chief Ominayak pointing out that it was the government's own greed and deviousness which had blocked establishment of the reserve for nearly half a century, forcing the Indians to pursue the full extent of their aboriginal rights in the first place. The Lubicons, he said, would be prepared to enter into any serious negotiations concerning Canadian recognition of their sovereignty and the real scope of their land claim.[34]

After a quick huddle in the national capital, the federal government returned in January 1986 with an *ex gratia* award – which it had previously refused to do on two separate occasions – of $1.5 million (Canadian) to cover the cost of Lubicon litigation for reserved land rights, to date. The Indians accepted the payment, and then filed suit in April for that amount *plus* an additional $750,000 Canadian to cover future costs of litigation; in November of 1986, the April suit was amended in federal court to encompass $1.4 million in past litigation costs and $2 million in projected legal fees.[35] In the latter month, the Lubicons also stepped up their campaign to organize actions attendant to the XV Winter Olympics, undertaking their first truly mass mailing on the subject and sending a delegation to Europe to engage in a speaking tour mustering support.[36]

Meanwhile, in June, Fulton had been replaced by Roger Tasse, a former federal Minister of Justice, in an attempt to arrive at a "negotiated settlement" in which the band would drop its plans for the Olympic and broad land claims in exchange for clear title to a tract approximately the size of the 1940 reserve. Following a consensus of the group, Chief Ominayak agreed to meet with federal officials, but only on condition that the government of Alberta would be completely excluded from participation in the proceedings. In July, after



only preliminary discussions, the Lubicons broke off negotiations when it became clear that Ottawa was not yet prepared to take up the matter of the aboriginal land claim in any meaningful way.[37]

This was followed, in January 1987, by an announcement by the Lubicons that they had determined in council that the band was now comprised of 458 individuals, some 250 of whom did not appear on federal Indian registration lists, and that they were prepared to accept a 90 square mile reserve centering upon the community of Little Buffalo, over which they would exercise full governmental control. In addition, they claimed undisturbed hunting, fishing and trapping rights over an area of approximately 4,000 square miles and insisted that, in order for these rights to have meaning, the Lubicon band would require a voice equal to those of other governments in determining corporate licensing and the development policy impacting their region. Chief Ominayak also stated that the Lubicons would henceforth begin, by force if necessary, to evict crews engaged in unauthorized oil and gas exploration and/or production crews within the reserve proper, and elsewhere as need be. In March, the 90 square mile reserve claim was amended to read "92 square miles/236 square kilometers" in a motion filed with the Court of Queen's Bench in Alberta.[38]

May of 1987 saw a delegation of Lubicons once again touring Europe, explaining the band's position and rallying support to the proposed Olympic boycott, and preparing an intervention on their case to be submitted to the United Nations Working Group on Indigenous Populations (a sub-part of the

U.N. Commission on Human Rights) the same summer. Another agenda of the delegation concerned a partially successful effort to convince various European museums not to participate by lending objects to *The Spirit Sings*, a Canadian government-sponsored exhibition of American Indian artifacts scheduled for display in conjunction with the Olympics in Calgary.[40] Other Lubicon spokespeople were traveling and speaking in the United States at the same time, and public response to the Lubicons' outreach efforts in both Europe and North America continued to be quite positive.[41]

In the face of mounting international pressure, both Ottawa and Alberta appointed formal negotiators – Brian Malone for the federal government, ; Jim Horsman for the province – in October of 1987. The federal government simultaneously released *The Fulton Report*, a plan prepared by the former Indian minister calling for tripartite meetings between Ottawa, Alberta and the Lubicons designed to resolve the land claim and sovereignty issues "equitably" and "permanently." The Lubicon leadership rejected the idea, pointing to the outcome of a similar tripartite negotiating arrangement signed on December 23, 1986, between Ottawa, Alberta and the 1,000 member Fort Chipewyan Band of Cree, in which the Indians' aboriginal land claims had been compressed into a mere 20 square mile reserve, divided into nine separate locations. Chief Ominayak stated that his people hardly considered this to be the "productive result of negotiations" touted by Alberta, at least not from the indigenous perspective. He followed up on January 23, 1988 by releasing through the *Calgary Herald* the information that the Lubicons had entered into a formal alliance with other bands and many whites in the north country, and that these "Indians and non-Indians in Alberta, Saskatchewan and Quebec have agreed to set up a resident army on Lubicon territory...[and] provincial fish and wildlife officials will be subject to arrest and trial" in the event they attempted to interfere with the exercise of Lubicon sovereignty anywhere within the 4,000 square mile area to which the band had direct and immediate claims.[42]

With the Olympic games already occurring, and the Lubicons and their supporters mounting highly visible demonstrations outside *The Spirit Sings* exhibition,[43] neither Alberta nor Ottawa had a ready response to this development. The last thing either government wanted at that particular juncture was the outbreak of an actual "shooting war" between Canada and a small group of Indians only a few hundred miles to the north. On February 4, Minister of Indian Affairs McKnight – citing as cause the fact that the Lubicons were still adamant in their refusal to even talk to representatives of the Alberta government, or even allow the release of genealogical data on the band to provincial authorities – officially requested that the province agree to transfer title to the contested area back to the federal government for purposes of effecting some resolution.[44] This was followed on February 10, when the provincial government released a thoroughly whiney press release complaining that it was impossible for it to negotiate a settlement with the Lubicons insofar as the Indians refused to allow Alberta's representatives to even attend meetings concerning the disposition of land and resources the province considered to be its own; the statement failed to mention that this was precisely the same sort of insulting and demeaning treatment Alberta had all along insisted on according Indians throughout its jurisdiction.[45] The province, despite its lack of real alternatives, still refused to pass over either title or full negotiating prerogatives to Ottawa.

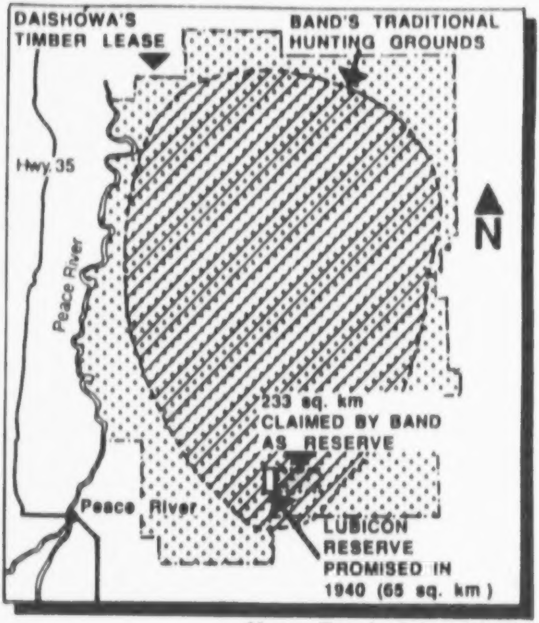
Finally, on March 17, 1988, in a speech before the House of Commons Standing Committee on Aboriginal Affairs and Northern Development, Minister McKnight publicly admitted that the Lubicon Lake Cree have every right to pursue aboriginal title to *all* lands within which they could demonstrate they had once conducted their traditional way of life. The government would no longer raise procedural issues as a means to block litigation of the matter, he suggested, and – probably as a result of the international attention the Lubicons had garnered through their "extralegal" activities – "further delay [in bringing the matter to an acceptable resolution] serves no one."[46] He also made it clear that the federal government was now prepared to enter a suit against Alberta Provincial Premier Don Getty unless the "Lubicon Lake matter" is "settled soon."[47]

The Daishowa Connection

Even before McKnight made his speech in the House of Commons signifying that the Lubicons had, to some extent at least, managed to effect a split between the two layers of government opposing them, Getty had offered Alberta's response. On February 8, 1988, the premier and Alberta Forestry Minister LeRoy Fjordbotten announced that the provincial government had entered into an agreement with the Japanese forestry corporation, Daishowa to construct a pulp mill and launch a timbering operation approximately 65 miles south of Little Buffalo.[48]

> The new pulp mill will be the largest hardwood pulp mill in Canada. It will employ about 600 people, 300 to take down and transport trees to the new mill, 300 to turn the trees into pulp. It will "produce" 1,000 metric tons of pulp per day, 340,000 metric tons per year. It will consume trees at the rate of about...4 million per year. The trees will come from a timber lease which covers an area of over 29,000 sq. kilometers, more than 11,000 square miles. *The timber lease to supply the new pulp mill completely covers the entire Lubicon traditional area* [emphasis in original].[49]

The Daishowa Deal


DAISHOWA'S TIMBER LEASE
BAND'S TRADITIONAL HUNTING GROUNDS
Hwy. 35
Peace River
N
233 sq. km CLAIMED BY BAND AS RESERVE
Peace River
LUBICON RESERVE PROMISED IN 1940 (65 sq. km)

Noreen Dennis, *Calgary Herald*

The move was astute, insofar as it forced a certain reconciliation of the Ottawa and Alberta positions:

> The new pulp mill will...cost more than 500 million dollars, including 75 million in Federal and Provincial Government grants. 9.5 million of the Government subsidy is being provided by Federal Indian Affairs Minister Bill McKnight, in his capacity as Minister responsible for the so-called Western Diversification Program. The Western Diversification Program is a political slush fund set up by the Federal Government to try and prop up faltering political fortunes in western Canada. In his capacity as Indian Affairs Minister, Mr. McKnight is of course also supposedly responsible for insuring that the constitutionally recognized rights of aboriginal people in Canada are respected.[30]

In addition, as Fjordbotten put it, "The Alberta government will be building rail and road access and other infrastructure to cost $65.2 million over the next five years, a necessary requirement to proceed in this relatively remote location. Lack of such access has long been an impediment to development of the forest industry in Northern Alberta."[91] In other words, the province intended to go for the Lubicon jugular. The announcements led Assembly of First Nations National Chief Georges Erasmus to demand that Canadian Prime Minister Brian Mulroney fire McKnight for conflict of interest.[92] For his part, Chief Ominayak went on the Canadian Broadcasting Corporation radio station in Edmonton on February 9 to warn that, "we're not going to allow anybody to come in and cut down our trees within our traditional lands." When asked by talk show hostess Ruth Anderson "how far he would go" to prevent the logging, he replied:

> It just depends on how hard the other side is going to push. We basically decided that we're going to start asserting our own jurisdiction. Now they announce this pulp mill and also that they're going to be leasing all the timber rights or trees that are going to be needed for the pulp mill that we have on our traditional lands.

The exchange continued, with Anderson asking whether the Lubicons would "resort to violence to stop this latest assault on what you claim is your land?" Chief Ominayak replied that, "our preference would be to not get into violence. But again, it all depends on how forceful the other side wants to be. But whatever it takes, that's what we're going to do." Elsewhere, the chief observed that the Lubicons are preparing to make a "last stand" on their land, and on their rights: "We're not threatening, we're not bluffing...and we would like to keep it as peaceful as possible. I just don't know how much longer we can go on like this."[93] Support for the Lubicons, meanwhile, throughout Canada and around the world increased steadily.[94]

The Future

The bets, as they say, are hardly in on the outcome at Lubicon Lake. At one level, it is certainly not realistic to expect that a small Indian band, even with a considerable number of allies, might militarily defeat the combined forces of several transnational corporations and an advanced nation-state such as Canada. Being forced to pursue the military option in literal terms would undoubtedly prove utterly catastrophic for the Lubicons and their "on line" supporters. Of this, there can be little doubt. Yet, failing to resist the imposition of governmental policy, or offering resistance only through channels approved by Canadian officials, is a course of action which has long since demonstrated that it will yield similarly catastrophic results for the Indians, both in terms of their administrative liquidation as peoples, and by way of insuring the destruction of the environment upon which all of us depend for our very survival. When the issues are framed in this way, it becomes as Chief Ominayak has said, "a good day to die."

What the Lubicon Lake Cree have going for them, beyond the sheer righteousness and correctitude of their position, is the fact that they have been able to attract widespread international attention and support to their cause. Whatever happens next in northern Alberta will happen in the full glare of world scrutiny, and under the full weight of world opinion. "Liberal democratic" nation-states such as Canada depend heavily upon their ability to clamp a lid of secrecy over their internal applications of lethal force for political purposes, thereby maintaining their ability to posture as "humanitarian" entities within the geopolitical arena. The Lubicons have proven themselves singularly successful in stripping away the necessary blanket of state secrecy in their own case, and have thus placed themselves in an ideal position to call the bluff of Canada's domestic saber rattlers. Canadian pursuit of a military or paramilitary option as a means of "resolving" the Lubicon claims to land and sovereignty thus carries with it undeniable and extremely negative consequences for the Canadian state itself. It is this political rather than military dimension to the Indian strategy which causes the Lubicon assertion that Canada will either have to "kill us or acknowledge our rights" to make a good deal of practical sense.

It is of course possible that Canadian officialdom, or at least some elements of it, will prove so narrowly racist and obtuse as to undertake an outright Indian war along the Peace River. In that case, the unremittingly ugly history of the Anglo domination in North America will be marked by yet another in its long series of genocidal occurrences. On the other hand it is entirely possible, under the circumstances created by the Lubicons, that wiser heads will prevail and that some settlement acceptable to the Indians will at last be negotiated by the Canadian government. If this occurs – given that the Lubicons are overtly demanding a resumption of control over their own government, legal system, identification of citizenry, and resources, as well as traditional lands – it will be a *major* breakthrough in the reassertion of indigenous sovereignty on this continent.

The stakes are *very* high at Lubicon Lake. Whatever else may be said with regard to the struggle there, the tactics and positions developed by this tiny band of Cree are deserving of study and immulation in many places. And all of us owe them an incalculable debt for having had the courage and vision to both frame things in their proper terms and bring matters to a head. In a very real sense, as go the Lubicons, so go we all.

End Notes

1 Goddart, John, "Last Stand of the Lubicon," *Equinox,* November 1987, pp. 71-72.

2 *Lubicon Lake Band Presentation to the Standing Committee on Aboriginal Affairs and Northern Development: General History,* House of Commons, Ottawa (Canada), May 18, 1983, pp. 1-2 (hereinafter referred to as *Lubicon Presentation).*

3 Goddard, *op. cit.,* p. 72.

4 *Ibid.*

5 *Lubicon Presentation, op. cit.,* p. 3.

6 Goddard, *op. cit.*

7 *Ibid.*

8 Letter, Alberta Regional Supervisor of Aboriginal Affairs to the Minister of Aboriginal Affairs, May 19, 1953.

9 Letter, Director of the Technical Division of (Alberta) Lands and Forests to the Minister of Aboriginal Affairs, October 22, 1953.

10 Letter, Alberta Regional Supervisor of Aboriginal Affairs to the Minister of Aboriginal Affairs, February 25, 1954.

11 Directive, Superintendent of Reserves and Trusts to Lubicon Lake Indian agent, February 9, 1955.

12 Letter, Alberta Supervisor of Aboriginal Affairs to Lubicon Lake Indian agent, January 23, 1955.

13 Letter, Alberta Supervisor of Aboriginal Affairs to Lubicon Lake Indian agent, January 21, 1955.

14 For a detailed analysis of this point, see Churchill, Ward, "Genocide: Toward a Functional Definition," *Alternatives: Social Transformation and Human Governance,* Vol. XI, No. 3, Center for the Study of Developing Societies, NY, July 1986.

15 *Lubicon Presentation, op. cit.,* p. 15.

16 Goddard, *op. cit.,* p. 68.

17 *Lubicon Presentation, op. cit.,* pp. 14-15.

18 *Ibid.*, pp. 15-16.

19 *Ibid.*, pp. 17-18.

20 *Ibid.*, p. 18.

21 *Ibid.*, pp. 19-20.

22 *Ibid.*, pp. 20-21.

23 *Ibid.*, p. 21.

24 *Ibid.*

25 *Ibid.*, p. 22.

26 *Ibid.*, p. 23; also see *Facts About the Lubicon Lake Indian Band Land Claims,* Government of Alberta (Fax: 403/427-1354), February 10, 1988, p. 2 (hereinafter referred to as *Lubicon Land Claims).*

27 CBC radio broadcast, February 2, 1988; the CBC contends "about 100" oil companies now have an interest in the Lubicon land.

28 *Lubicon Land Claims, op. cit.*

29 *Ibid.*

30 *Ibid.*

31 *Ibid.*

32 *Ibid.*

33 *Ibid.*

34 Statement of Chief Bernard Ominayak, Edmonton, Alberta, December 11, 1985.

35 *Lubicon Land Claims, op. cit.*

36 "Indians vow to boycott Olympics," *Calgary Herald,* November 19, 1986.

37 *Lubicon Land Claims, op. cit.*

38 *Ibid.*

39 *Ibid.*, p. 3.

40 *Ibid.*

41 The Lubicons also connected with resident state-side support/organizers such as Ms. Dorothy Still Smoking during this period.

42 *Lubicon Land Claims, op. cit.*

43 See, as examples of the coverage the Lubicon actions obtained, Connery, Allen, "Why Lubicons are protesting," *Calgary Herald*, January 27, 1988; Ogresko, Paul, "Sharing the Shame: Boycott Hits Olympic Museum," *Calgary Sunday Sun*, January 31, 1988; and Hume, Steve, "The Spirit Weeps: Power, Genius and Hypocrisy at the Glenbow Exhibit," *The Edmonton Journal*, February 14, 1988.

44 *Lubicon Land Claims, op. cit.*

45 *Ibid.*

46 McKnight's exact quote: "The band has now rejected all recent initiatives under the *Treaty 8* process and apparently intends to pursue its case against Alberta for Aboriginal title. That is their right."

47 See "Indian Affairs may sue Alta. over Lubicons," *Ottawa Citizen*, February 2, 1988; also see Fraser, Graham, "McKnight condemns Alberta move on land claimed by Lubicons," *Toronto Globe and Mail*, February 11, 1988.

48 Press Release (Daishowa), Lubicon Lake Band of Cree, New Buffalo, Alberta, February 18, 1988, p. 1.

49 *Ibid.*

50 *Ibid.*, p. 2.

51 Government of Alberta (Canada), Press Release N.R. 055, February 8, 1988, p. 1; also see Booth, Karen, and Havid Holehouse, "Horsman to bypass band," *The Edmonton Journal*, February 2, 1988.

52 Letter, National Chief Georges Erasmus, Council of First Nations, to the Right Honorable Brian Mulroney, Prime Minister of Canada, February 16, 1988.

53 See Booth, Karen, "Lubicons prepare for 'last stand' on land claim," *The Edmonton Journal*, January 25, 1988.

54 See, for example, Lowey, Mark, and Kathy Kerr, "Lubicon support on the rise," *Calgary Herald*, February 25, 1988.

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Section III.

The Arctic North

Report on Critical Issues in the Arctic
Inuit Circumpolar Conference

by Dalee Sambo

The Inuit Circumpolar Conference (ICC) is the international organization representing all Inuit (Eskimo) from Alaska, Canada, and Greenland. There are approximately 100,000 Inuit throughout Alaska, Canada, and Greenland. The ICC was founded by the late mayor, Eben Hopson, in Barrow, Alaska, during 1977. Hopson and others were well aware of the threats that off-shore oil development posed to the bowhead whale habitat and the Arctic Ocean generally. Hopson felt strongly that local people had to have local control over progress and development of the arctic areas. After years of lobbying and campaigning to gain national attention for Inuit concerns in Alaska, and failing to get the needed attention, Hopson decided to form the Inuit Circumpolar Conference.

Presently, the ICC has its international headquarters in Kuujjuaq, Northern Quebec, Canada, where its president, Mary Simon, resides. Regional offices are located in Anchorage, Alaska; Ottawa, Canada; and Nuuk, Greenland. There are 18 delegates chosen by regional organizations in each of the three countries. The 54 delegates selected in 1986 will serve until the 1989 general assembly. These delegates appoint the six executive council members.

The main objectives of the ICC are:

- to strengthen unity among the Inuit of the circumpolar region;
- to promote Inuit rights and interests on the international level;
- to ensure adequate Inuit participation in political, economic and social institutions which Inuit deem relevant;
- to promote greater self-sufficiency of the Inuit;
- to ensure the endurance and the growth of Inuit culture and societies for both present and future generations;
- to promote long-term management and protection of arctic and sub-arctic wildlife, environment and biological productivity;
- to promote wise management and use of non-renewable re-

The *raison d'être* of the ICC. A great deal of traditional Inuit culture, society and economy remains intact in the modern world and requires defense against the effects of state policy and contemporary corporate industrialism. (Photo: *Bill Hess*)

> sources and incorporate such resources in the present and future development of Inuit economies, taking into account other Inuit interests.

Since its founding in 1977, the ICC has held a general assembly every three years. Through their resolutions, the ICC general assemblies set out the diverse mandates of the executive council and the day-to-day work of the ICC. In 1983, the ICC was officially granted Non-Governmental Organization (NGO) status by the United Nations (U.N.) Economic and Social Council. As an NGO, the ICC enhances its capacity within the international forum to promote the rights and interests of the Inuit regarding the many critical issues presently confronting them.

Arctic Policy

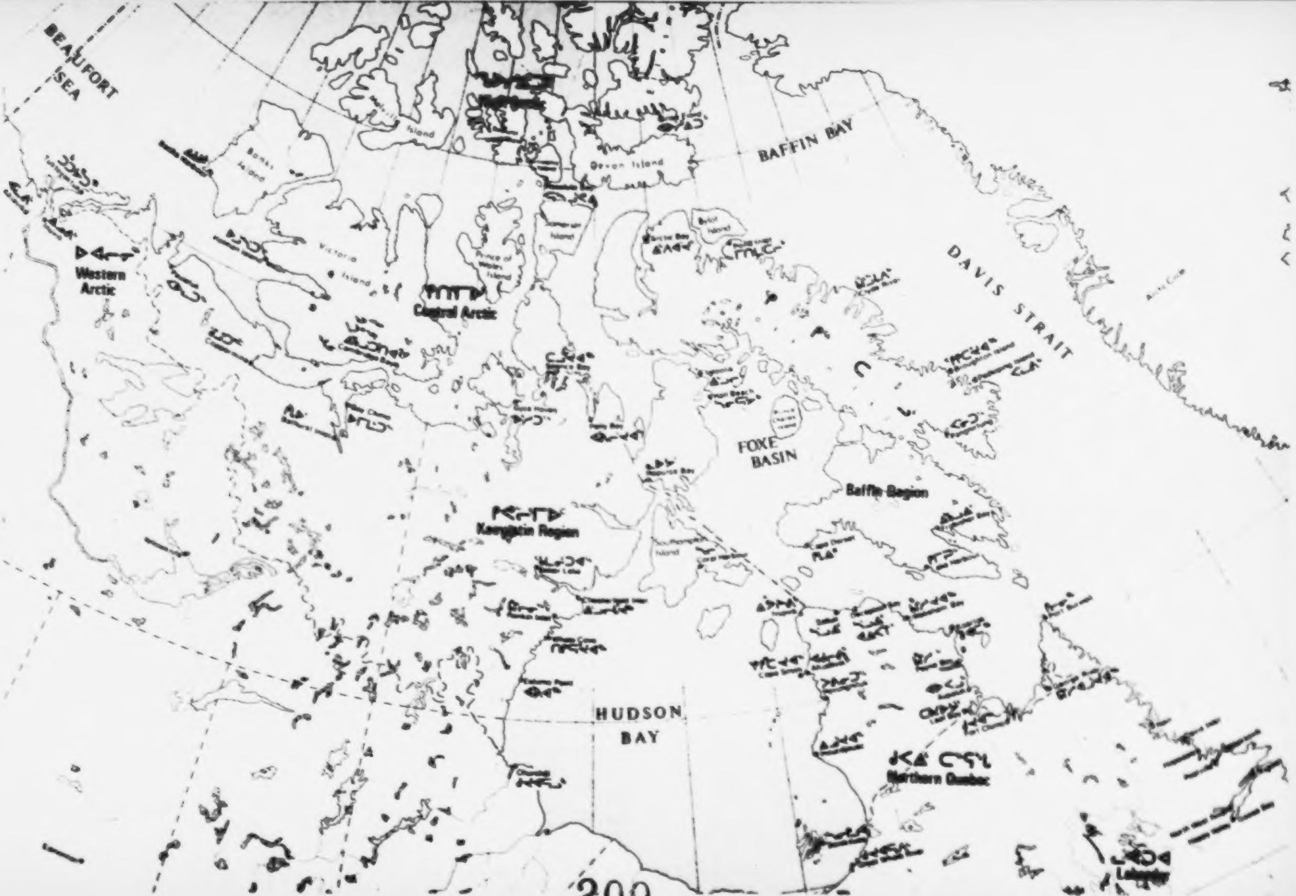
One of the principal projects undertaken by the ICC is the development of a comprehensive Arctic policy. Over the long term, the ICC intends to address both domestic and foreign policy aspects of a wide range of issues affecting Inuit and their circumpolar homeland. For this policy to be comprehensive it must address economic, social, cultural, environmental, as well as political matters. The Arctic policy can be seen as a statement of fundamental principles that we, as Inuit, feel must be recognized and respected by governments. The aim of the Arctic policy is to achieve a broad consensus to the priorities, policies, and principles to be advanced in Inuit circumpolar regions, taking into account the significance of the Arctic and its resources to both present and future generations. We seek to encourage coordination of policy-making and decision-making in the international community, particularly in and among those nation-states with Arctic jurisdictions and interests.

Through the Arctic policy, we seek to ensure the survival of Inuit as a distinct people and to integrate Inuit cultural values and concerns with all aspects of policy development. We also want to protect the delicate Arctic environment, including the marine and other resources upon which Inuit depend. We also feel that it is important to favour those policies and principles which foster peaceful co-existence and use of appropriate and safe technologies in the circumpolar regions. Furthermore, we hope to promote international understanding and cooperation in arctic matters through collaborative research, information and cultural exchanges, and international agreements. We hope to have another draft of the Arctic policy document ready for review by the 1989 general assembly delegates, scheduled to meet in late July-early August at Sisimiut, Greenland.

Inuit Regional Conservation Strategy

In 1985, the ICC established its environmental commission, charged with the mapping out of an environmental policy strategy covering Alaska, Canada, and Greenland. The commission has been working to create the basis of a common environmental and developmental policies approach. Through this approach, the relevant laws of the three ICC member nations may be harmonized in the future. The project, called the Inuit Regional Conservation Strategy (IRCS), received unequivocal endorsement by the ICC at its 1986 general assembly in Kotzebue. It is the first such strategy by an indigenous people to implement a "world conservation strategy," an attempt – on an international level – to blend together into one single plan the respective needs for modern-day development on many levels, *as well as* for sustainable traditional wildlife harvests and a growing Inuit autonomy.

We are well into Phase II of the IRCS and have made substantial progress. Recently, ICC representatives participated in the 17th assembly of the Inter-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Victoria Island
Prince of Wales Island
Devon Island
BAFFIN BAY
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Labrador

national Union for the Conservation of Nature and Natural Resources (IUCN), which took place in San Jose, Costa Rica, on February 1-10, 1988. The IUCN, which celebrated its 40th anniversary this year, participated in the drafting of the world conservation strategy and is concerned with conservation of natural resources and sustainable development. There are over 117 countries represented through nation-states (59), government agencies (125), national and international NGOs (384), and non-voting affiliates (21). On February 2, 1988, the ICC's application for membership was approved by the IUCN membership. We now have voting power within this worldwide organization. In addition, a resolution was adopted by the assembly which strongly supports the efforts of the ICC and endorses the Inuit Regional Conservation Strategy.

The IUCN is another important international forum for indigenous peoples and their organizations to be involved in. The ICC was able to inform the members of the IUCN that traditional knowledge and the expertise that indigenous peoples hold with regard to use of natural resources is significant and must be respected. Indigenous peoples must take an initiative to follow the work of the IUCN and similar organizations. To effect change and to

Marine mammals are an integral part of the traditional Inuit economy as is witnessed by this group of contemporary seal hunters. (Photo: *Bill Hess*)

provide input you must join and take an active role in the work, and make the contributions that you can. Indigenous peoples harvesting rights are under attack at all levels and from all quarters. The formation of Indigenous Survival International (ISI) testifies to this fact: indigenous peoples now need to organize coalitions to counter anti-harvest movements to protect their way of life. The Inuit Circumpolar Conference has addressed harvesting issues ranging from a polar bear study to the *Migratory Birds Treaty*. With our limited staff and resources, we have been able to follow up on issues of importance to Inuit communities.

Marine Mammal Protection Act

The Marine Mammal Protection Act is up for re-authorization during this congressional session. We will be working to ensure that the native exemption remains in place, and that our rights to harvest marine mammals will not be limited nor undermined in any way. The exemption allows harvest of marine mammals for food or the production of traditional handicrafts. We have also considered addressing the problems of trade of marine mammal products. Currently, we are restricted from trade of these products and this has seriously limited our full use of the animals that we do harvest. In fact, at this time it is not possible for us to travel with traditional handicrafts to share with our friends in other countries. For example, delegates from Greenland traveling to the 1986 general assembly had their seal skin vests and other personal items confiscated. Some items were not returned until quite some time later, others were not returned at all. The ICC executive council has identified the first priority to be retention of the native peoples' exemption for subsistence harvesting purposes and that consideration for trade and sharing of products be given only after this priority is met.

Migratory Birds Treaty

On October 9, 1987, the 9th U.S. Circuit Court in California issued a decision which removed the legal foundation for the rules governing the subsistence hunting of migratory birds. This decision has triggered a position within the U.S. Fish & Wildlife Service to actively pursue enforcement of the "closed season" under the *Migratory Birds Treaty*. This means that the federal agency will prosecute anyone taking migratory birds, specifically waterfowl and/or their eggs, during the closed season. The closed season happens to be the time in which these migratory birds are in Alaska, making the springtime taking of the waterfowl illegal. Basically, the decision has expropriated the subsistence hunting rights of indigenous people. A protocol to amend the *Migratory*

Birds Treaty to provide for managed subsistence use of waterfowl in northern Canada and Alaska is underway. This protocol will enable subsistence harvest and management of the waterfowl during the spring season. The ICC executive council called upon the governments of Canada and the United States together with the provincial, state and regional authorities, to adopt the protocol, and further called upon native and subsistence users to urge representatives to demonstrate support for adoption of the protocol as soon as possible. It is the view of the ICC executive council that the work towards the protocol must be a priority in Canada and the United States.

Shared Resources

We have also been concerned about shared resources between two different jurisdictions, i.e. polar bears in the Ellesmere Island (High Arctic Islands) and the Thule District of Greenland. The ICC has initiated a polar bear study under the IRCS program. We have also discussed small whales, such as belugas, as a shared resource that may require shared management. Bilateral agreements between Canada-Greenland/Denmark, and possibly Canada/Alaska for beluga, may be possible. The IRCS project encourages such local management regimes for local user groups.

International Whaling Commission

The ICC, throughout the organization and its region members, has played an important role in the recognition of subsistence whaling rights within the International Whaling Commission (IWC). In 1980, the ICC created the *Inuit* Circumpolar Whaling Commission to research subsistence whaling activities and whale conservation programs. In 1981 the ICC was granted status as an official observer of the IWC. We have worked closely with the Alaska Eskimo Whaling Commission and the Hunters and Fishermen's Association of Greenland (both hold IWC observer status) to lobby for their concerns and whaling quotas. At the next International Whaling Commission meeting, the Alaska Eskimo Whaling Commission and the Hunters and Fishermen's Association in Greenland will attempt to maintain whale quotas. However, they wish the quotas would be increased and feel that the scientific research could support increased quotas.

The ICC is concerned that the IWC may begin looking at the regulation of small cetaceans, walrus and other marine mammals. Because of a moratorium on commercial whaling the IWC has little to do, other than regulating subsistence hunt of whales by Alaskans and Greenlanders. We strongly feel that small cetaceans, walrus and other marine mammals be regulated by the

The cohesion of contemporary Inuit society is readily evidenced in the community nature of gathering sustenance. Scenes such as this remain the norm rather than the exception (Photo: *Bill Hess*)

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primary user groups — the Inuit and respective government agencies, rather than the IWC. These matters must be carefully monitored. We hope that through the IRCS and other avenues, that we can move closer to circumpolar agreements, joint management agreements, and begin direct local control and management programs similar to that of the Alaska Eskimo Whaling Commission and the Alaska Eskimo Walrus Commission. Ultimately, this is the purpose of the IRCS project, and it will take only time to put all of the required strategies in place.

Soviet Inuit Participation

No Inuit from Siberia have yet attended an ICC General Assembly. ICC continues to lobby the respective governments to secure the future participation of the Siberian Inuit in the ICC. The issue of Yuit (Soviet Inuit) participation at the 1989 ICC general assembly and Siberian Inuit exchange were discussed by the ICC executive council in Nome recently. In addition, the news of an invitation to the Soviet Union was brought to Nome by the Greenland council members. Nine people from Alaska, Canada and Greenland, have been invited to the Soviet Union in August of 1988. If all goes well, they will travel to the Chukotka Peninsula and visit two Siberian Inuit communities, including Uelen, which is located near Big Diomede Island. The recent invitation flows from discussions undertaken by Greenlandic political party members and organizations in the Soviet Union. Based upon these recent developments we are very hopeful that Yuit observers and participants will attend the next general assembly.

Militarization of the Arctic

The recent contacts with the Soviet Union are complemented by the foreign policy work that the ICC has undertaken in pursuit of a nuclear weapon free-zone for the arctic. Since our inception in 1977, we have been concerned about excessive militarization of the Arctic. With a view to encouraging alternatives, the ICC is preparing a draft international agreement concerning the establishment of an Arctic Nuclear Weapons Free Zone. At the ICC general assembly (July, 1986) in Kotzebue, Alaska, we were specifically mandated to formulate an Arctic foreign policy as an integral part of our work. The ICC is convinced that it is an opportune time to be directly involved in foreign policy work. Moreover, the United Nations General Assembly and other U.N. bodies have highlighted with approval the role of non-governmental organizations in furthering peace and disarmament.

Presently, the world is witnessing a new Soviet openness to curbing the arms race. This change in Soviet policy could potentially lead to balanced and deep reductions in strategic nuclear forces. Since progress in this regard by the superpowers has not been satisfactory, it would seem essential that other Arctic-rim nation-state governments and other interested organizations seek constructive ways to influence or contribute to the peace process. The Inuit Circumpolar Conference fully recognizes the central role of nation-state governments in defense and other foreign policy matters. At the same time, policy-making concerning Arctic and global security is too crucial to exclude northern communities and organizations. Decisions affecting the future of the Arctic and the quality of life should not be left solely to "experts" in the military or in remote government departments.

Mary Simon, ICC president, has sent formal letters to General Secretary Gorbachev and President Reagan outlining our concerns about militarization of the Arctic. The letter and attachments sent by diplomatic pouch to General Secretary Gorbachev outline our concerns about the militarization of the Arctic and it also cites his recent Murmansk speech, where he referred to the Arctic as a "zone of peace." Since then President Simon has met with the Soviet Ambassador, in Canada, to discuss specific defense related issues and the need for formal cultural exchange with Soviet Inuit. These efforts may lead to an official meeting between ICC President and General Secretary Gorbachev. We have received a response from the National Security Council, on behalf of President Reagan. The response simply outlines the U.S. position on defense and militarization, it does not really offer an opportunity for future discussions and consultations with U.S. government officials on these matters. However, ICC will continue to pursue further consultations with all interested governments and parties.

On June 3, 1987, Mary Simon also met with Defense Minister of Canada, Perrin Beatty, to discuss similar defense issues and the concerns of the Inuit Circumpolar Conference with respect to nuclear weapons and militarization of the Canadian north. After the Nome Executive Council meeting, a proposal to the Greenland Home Rule Government was sent to the Premier of Greenland and members of a newly formed government commission on Peace and Security matters. This proposal outlines our specific concerns about militarization of Greenland and seeks cooperation and financial support for our foreign policy work, within the framework of the Arctic policy .

In Greenland, the Home Rule Government, in 1986, adopted a resolution declaring the whole of Greenland a nuclear free zone. Of course, the United States will neither confirm nor deny assertions that there are nuclear weapons in place in Greenland. However, it is significant that the Home Rule Government has taken this strong position on nuclear weapons and nuclear activity in their homeland.

The unity of humans in the natural order is still manifested in every aspect of today's Inuit life. Indigenous cultures such as this have obvious abilities to show industrial society how to recover its sence of balance and harmony (Photo: *Bill Hess*)

The ICC Alaska Office has been involved in the campaign for the adoption of legislation in the Alaska state legislature, calling for a nuclear free Arctic and sub-Arctic. We have also expressed opposition to the proposed plutonium flights that may stop for re-fueling in Anchorage, and the homeporting issue. Communities in Alaska have been considered as possible homeporting sites. Congressional testimony over this issue has indicated that the navy warships involved are "nuclear capable," meaning that they are capable of carrying nuclear weapons. This includes long-range and nuclear-tipped Tomahawk cruise missiles. Once based in Alaska, it is highly probable that they will be traveling throughout Arctic and sub-Arctic waters. In light of the ICC's position on nuclear weapons, General Secretary Gorbachev's recent speech, and the *INF Treaty* signing, the homeporting proposal will only hinder any favorable and positive discussions to adopt a more comprehensive approach to arms control measures.

International Work

The ICC has also been very active in the work of the United Nations Working Group on Indigenous Populations, based at the Human Rights Center in Geneva, Switzerland. This working group is charged to draft principles addressing indigenous human rights. The ICC has contributed to this work by making submissions about Inuit political developments and our discussions with nation-states about self-determination and other fundamental principles that should be recognized by governments. We have offered our full text of the Arctic policy principles to the Working Group for consideration throughout their drafting work. We have worked with other international indigenous NGOs in co-sponsoring meetings to discuss common problems and to share our experiences with other indigenous peoples from all over the world. The 1987 meeting of indigenous peoples attracted participants from 8 indigenous NGOs, and 25 other NGOs. At the 1986 ICC general assembly the delegates adopted a resolution calling upon the United Nations to declare 1992 as the "Year of Indigenous Peoples of the World." The Indigenous Peoples Preparatory Meeting (July, 1987) adopted a similar resolution and formally submitted it to the U.N. Working Group. Since the summer session, this resolution has slowly climbed the U.N. ladder. The Working Group and the Sub-Commission on Prevention of Discrimination and Protection of Minorities have adopted the resolution. The Human Rights Commission is meeting now and will likely review and adopt the 1992 resolution.

The Indigenous Preparatory Meeting also agreed to submit statements to the U.N. Working Group addressing the *Draft Declaration of Principles* adopted by the preparatory meeting of 1985; a resolution supporting the

Australian aboriginal people's position on the 200 year anniversary of colonial invasion of Australia; a resolution on the International Labour Office and its partial revision of Convention 107 – "Indigenous and Tribal Populations"; and a statement on indigenous self-determination.

International Labour Organization

The ICC will also be playing an active role in the International Labour Organization (ILO). The ILO will be revising Convention 107, addressing indigenous and "tribal" populations in June 1988. The ILO is comprised of employers, unions, and nation-state governments — there is no membership place for indigenous organizations like the ICC. The current language of the Convention is written from an "integrationist" standpoint. Through our participation and the participation of other indigenous peoples and organizations we may be able to improve the language of Convention 107 and the ILO's overall policy towards indigenous populations. The access that we, as indigenous organizations and representatives, have is quite limited; however, it is important for us to participate to the extent that we can. We will be working to lobby ILO members to ensure that they are aware of the ICC's Arctic policy principles and our general goals and objectives, and how they relate to the Convention 107 language. The ICC application to "special list" of NGOs has been accepted. An Indigenous Working Group to focus on the ILO has been organized in Canada. The working group meetings are held to develop a coordinated strategy and response by Canadian indigenous peoples in preparation for the upcoming series of ILO meetings. Representatives of Inuit Circumpolar Conference, Inuit Tapirisat of Canada, Assembly of First Nations, Metis National Council, Native Council of Canada, and others are members. The U.N. Working Group and the ILO are just two international bodies that have undertaken the development of draft principles and policies which will eventually affect indigenous people at the community level.

International Congress on Circumpolar Health

This international symposium is held every three years with the goals of: (a) bringing together medical scientists, health care delivery specialists, health administrators and health consumers to discuss the state of the art in their respective fields, (b) to allow national and international participants to observe and discuss the health situation in their own countries, and (c) to relate solutions to health problems in other parts of the world to the unique problems of the circumpolar regions. During the June 8-12, 1987, ICCH meeting, researchers focused on matters of circumpolar health without the benefit of broad indigenous peoples participation. There is a strong need for greater indigenous participation within this important international forum. Below are some examples of research that the Congress members will be focusing on:

- The study of the Genetics of the Sami and Inuit and reference to people as genetic isolates. One comment was that "research must be done before the genetic pool is 'diluted'."

- AIDS research done in the northern regions because of the general attitude that particularly Greenland will be susceptible to an AIDS epidemic. Of major import was the fact that two Inuit seen in Montreal contracted AIDS by transfusion and have now gone into remission. Possibly genetically isolated people such as the Inuit will be used as a testing group for AIDS research because of their possible immunity.

- Research of alcohol metabolism, studying the genetic predisposition to "alcoholism" among the people of the northern regions.

- The research of the northern adaptation. Cold adaptation has been studied but new research would be on the electromagnetic aspects in adaptation.

During these discussions there was no mention of the Inuit Circumpolar Conference Arctic policy or the Alaska Native Health Board's Policies, or of the impact of research concerning traditional values and behavioral issues. The general attitude did not reflect the impact and concern of bio-medical research on indigenous people. The ICC will be working cooperatively with other indigenous groups to establish a clearing house for material on research of native communities and people. Canada has started working on this already. This effort will try to ensure that indigenous peoples are involved with health issues and concerns both nationally and internationally, and that the native viewpoint be represented and published by indigenous people in recognized health publications. In Alaska we have begun work on a talent bank of native people that will document the variety of skills needed to become "professionally" involved and for generating relevant data. Our goal is to make sure that at the next International Congress on Circumpolar Health in 1990, at Whitehorse, there be representative views and papers presented by indigenous people.

Arctic National Wildlife Refuge

The United States Congress is currently considering the opening of the coastal plain of the Arctic National Wildlife Refuge (ANWR), located in the far northeastern corner of Alaska, to oil exploration. The Coastal Plain may have large deposits of oil and it may not. If opened for exploration, development would likely follow. There are two views being represented in congress: that of the pro-developers who are strongly in favour of opening the refuge to oil exploration, and that of the environmental groups who are strongly opposed.

Throughout 1987 the U.S. Department of Interior held a brief series of public hearings on the ANWR issue. The Department of Interior then issued the *Draft 1002 Report*, which was to be considered an impact statement. There was only one hearing held in a rural community: Kaktovik. The Athabascan Indian people of Arctic Village, Venetie, Fort Yukon, and Old Crow, Canada, were not given the opportunity to comment through a hearing process. The Inuit and Indian of both Canada and Alaska are dependent on the migratory wildlife resources of the coastal plain, in particular, the Porcupine caribou herd. The ICC executive council, in a formal statement, felt that the *Draft 1002 Report* was not adequate. The issues of consultation with affected communities, impact on wildlife, primarily the Porcupine caribou herd, and the likely effects on Inuit culture and lifestyle on both a local and regional level were also addressed in the ICC Council statement. In addition, the matter of benefits to Inuit and the communities affected, allocation of a reasonable portion of mineral revenues, training and employment, infrastructure, and other community improvements should be provided in the event of exploration activity. Finally, if the area is opened up for development, the matter of strict compliance measures must be put in place and enforce.

In addition to the various positions of Inuit and Indian peoples in Canada and Alaska, there are many other matters that will have to be addressed in the legislative process. One important matter is that of the "land exchanges" prompted by ANWR. Some native regional and village corporations own land within wildlife refuges near their communities or regions. The U.S. Fish and Wildlife Service has management jurisdiction over these lands and they would like to own all the lands within the refuges to allow for easier management. The fish and wildlife service is working out deals with native corporations to exchange their "inholdings" for subsurface tracts within the coastal plain; it is a process of speculation. The land exchanges will not go through if congress votes to keep the coastal plain closed to oil exploration. If no oil is found, the fish and wildlife service would return some of the land and keep the rest, but this is only an option. This option and the deals are currently being negotiated by the corporate officers. It is not clear as to whether or not the people will be able to vote to approve or ratify the agreements. The ICC issued the statement, however, they did not take any position to support or oppose the opening of the coastal plain for development. This has been considered a "regional issue." There are diverse positions on ANWR in the Inuit community. Some of the native regional corporations established under ANCSA could benefit financially, while other indigenous communities could suffer from the development. The matter will be decided upon by the people of Alaska and the U.S. Congress.

Amauligiak Project

The ICC executive council has also reviewed documents concerning the proposed oil development in the Amauligiak Field in the Canadian Beaufort Sea. This issue is similar to that of ANWR due to it being a "regional issue," where some of the Inuit communities could benefit financially, while others may suffer the consequences of development. The Amauligiak project involves transporting oil by tanker, and this method of transport has generated great concern because of the Arctic ocean conditions. Also, Alaskan Inuit are strongly concerned about the effects that this may have on the bowhead whale population. Here again, the council statement addressed matters of consultation, benefits/revenues, training and employment, infrastructure, etc.

Greenland

The Greenland home rule government will focus on many issues in the months ahead. In particular, they will be dealing with budget and finance matters. The ICC Greenland office has informed us of the establishment of an Inuit resource center to be based in Nuuk, at the ICC office. The Nordic Council in Greenland is donating books and documents to the new center. At the recent executive council meeting in Nome, we addressed the matter of the Commission on Relocation, established by the Danish Government. This commission is responsible for studying the impact on the forced relocation of the Qanaq (Thule) people in 1953, to allow for the placement of a U.S. Air Force base. We learned that the commission is scheduled to make its final report by the end of 1989, but they have not yet begun their work. There has been no substantive report to the parliament or to the people concerned. The council strongly urged the commission to begin its work immediately, to restore public confidence in the commission and to demonstrate its accountability. The people of Qanaq have lived with uncertainty for too long with respect to this issue and it is the view of the ICC that the commission must begin to respond to these concerns and provide a full report as soon as possible.

Canada

In Canada the issues of land claims in Labrador, low-level military training flights, and elections for officers and members of the Inuit Tapirisat of Canada, the National Inuit organization, is coming up. Makivik Corporation, the regional corporation established under the James Bay/Northern Quebec Agreement, recently held their elections. Charlie Watt was elected to serve as president and Zebedee Nungak will serve as vice president in charge of political development. The creation of Nunavut ("Our Land") will also be dealt with throughout the year. Nunavut is a proposal to establish a territorial-type government beyond the tree-line in the present Northwest Territories, where indigenous people are a majority. The matter of the constitutional talks and First Minister's conferences is certainly going to be at issue again. Possibly in a future series on the Arctic, we can better address these important issues.

Alaska

Alaska native land rights were not addressed in the new constitution when Alaska became a state in 1959. The discovery of huge quantities of oil in Prudhoe Bay in the late 1960s encouraged industry and the state and federal governments to support swift passage of the Alaska Native Claims Settlement Act of 1971 (ANCSA), which assigned title of 44 million acres of native lands to profit-making regional and village corporations, and whose stockholders were solely indigenous Aleuts, Tshimpian, Tlingit, Athabascan, Haida and Eskimos of both Yupik and Inupiaq heritage. There are many obvious threats to native lands and cultures inherent in the corporate scheme of ANCSA.

In 1983 the ICC established the Alaska Native Review Commission (ANRC) to conduct an in-depth review of ANCSA. Thomas R. Berger was selected as sole commissioner. The ANRC conducted a series of hearings involving thousands of Alaska natives, from 1983 to 1985. The final report *Village Journey* strongly recommends that Alaskan native nations assume title of their corporately owned lands as soon as possible in order to retain their landbase. The recommendation, and others made by Berger pertaining to protection of the hunting and fishing rights of Alaska natives and maintenance of traditional tribal governments, reflect the aspirations of Alaska natives.

After a lengthy and difficult lobbying effort, on January 20, 1988, President Reagan signed into law the provisions that amend ANCSA. The new law, the

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"1991" legislation (Public Law100-241), does not really protect the land from being lost or sold, nor does it ensure continued indigenous ownership and control of the corporations. It does not provide for returning land to the nations. Neither congress nor the state are willing to acknowledge that nations have the powers of self-government. Public Law 100-241 does not require stock for the "after-borns," those born after 1971 who are not eligible for enrollment. Shareholders still have to vote to include the "new natives." The new law does not stop the stock from being sold; it just makes it more complicated. Native stock will not automatically go on the market in 1991, but shareholders can vote to do this. The bill actually allows corporations to sell new stock to non-natives! The new provisions addressing stock and issuance of new stock means indigenous people will have less control than ever over their corporations and lands.

In some cases, a handful of present-day adults are empowered to sell off the whole patrimony of an indigenous village or nation, which was once held in common for the benefit of all, forever. The wrongs of ANCSA are unchanged. A flow of information to the villages and nations, and a series of educational workshops in the communities must be held to warn people of the new law and the precautions to be taken in order to retain their land and way of life.

NOTE: The information in the final section (*Alaska*) is provided on behalf of the author, and is not reflective of the ICC's views about and position on this regional issue.

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Dam the Dams Campaign is a grassroots organization, based mainly in Ontario, devoted to stopping the spread of hydrological engineering in Canada.

Bobby Gene Garcia (Chicano; Mestizo) was a brother who helped Leonard Peltier escape from the federal prison at Lompoc, California on July 20, 1979, a matter which cost him a five-year prison sentence. He was apparently murdered by guards at the federal prison in Terre Haute, Indiana on the night of December 13, 1980.

Jim Harding is a professor of social ecology at the University of Regina, Sakatchewan, and an active member of the International Uranium Congress.

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Glenn T. Morris (Shawnee) is an assistant professor of political science and director of the Fourth World Center for Study of Indigenous Law and Politics at the University of Colorado at Denver. A graduate of the Harvard University law school, he has prepared numerous interventions to the United Nations Working Group on Indigenous Populations, edits *The Fourth World Bulletin*, and has authored several essays on indigenous rights under international law.

Bernard Nietschman is a professor of geography at the University of California at Berkeley. He has authored a number of influencial essays on the rights and status of indigenous nations, and has been a strong advocate for the Sumu, Rama and Miskito peoples within the Atlantic Coast region of Nicaragua.

John Trudell (Santee Dakota) is a poet/performer whose recordings include *Tribal Voice*, *J.T./J.E.D.*, *Grafitti Man* and *But This Ain't El Salvador*. Trudell was a leader in the Indians of All Tribes occupation of Alcatraz Island in 1969-70, and national chair of the American Indian Movement from 1974-79. His books include *Living in Reality*.

Dalee Sambo (Inuit) is on the directoral staff of the Inuit Circumpolar Conference, a United Nations Type II (Consultative) Non-Governmental Organization. She has been active in creating the Draft International Declaration of Indigenous Rights before the United Nations Working Group on Indigenous Populations.

Jim Vander Wall was an early member of the Native American Solidarity Committee, and has been involved in Leonard Peltier defense work for more than a decade. He has published several essays on the Peltier case and is coauthor, with Ward Churchill, of *Agents of Repression* and the forthcoming *COINTELPRO Papers*.

Sharon H. Venne (Anishinabe) is an attorney, legal historian and long-term indigenous rights activist in Canada. An assistant to the *Treaty Six* Chiefs, she has been a major proponent of Indian self-determination during Canada's constitutional process and a consistent delegate to the United Nations Working Group on Indigenous Populations.

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This document, the first of two volumes, is a collection of articles comparing the problems and issues facing the indigenous nations of North America. Loss of lands and resources at the hands of contemporary nation-states such as the U.S. and Canada, as well as cultural "assimilation" policies undertaken by these states, have placed Native North America in grave peril. Both the nature of the threats and the forms of native resistance are examined in this collection of essays.

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